



UNITED KINGDOM – ANGUILLA – BRITISH OVERSEAS TERRITORY

TECHNICAL ASSISTANCE REPORT-MODERNIZATION OF THE CUSTOMS LEGISLATIVE FRAMEWORK

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TECHNICAL ASSISTANCE REPORT

ANGUILLA

Modernization of the Customs Legislative Framework

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Acronyms and Abbreviations

ACIS	Advance Cargo Information System
APIS	Advance Passenger Information System
AR	Advance Ruling
ASYCUDA World	Automated System for Customs Data (version = “World”)
CARICOM	Caribbean Community
CARTAC	Caribbean Regional Technical Assistance Center
CED	Customs and Excise Department
FAD	Fiscal Affairs Department
GATT	General Agreement on Tariff and Trade
GST	Goods and Services Tax
HQ	Headquarters
HS	Harmonized System
IMF	International Monetary Fund
IT	Information Technology
MOF	Ministry of Finance
PCA	Post Clearance Audit
RKC	Revised Kyoto Convention
RM	Risk Management
SAFE	Framework of Standard to secure and facilitate Global Trade
SW	Single Window
TA	Technical Assistance
TFA	Trade Facilitation Agreement
TTP	Trusted Trader program
WCO	World Customs Organization
WTO	World Trade Organization

Preface

CARTAC conducted a two week remote mission to Anguilla between October 11th and October 21st, 2022. This mission was a follow up on an earlier mission in April 2022 that conducted a comprehensive review of the current legislative framework for customs in Anguilla and made recommendations to modernize customs. This mission centered on enacting new legislation in line with the CARICOM model legislation for customs and best practices promoted by the WTO TFA, WCO SAFE Framework including provisions for a trusted trader program (TTP).

The mission comprised Ms. Fanny Euran, FAD contracted legal expert and Mr. Grenville John, Tax administration Advisor.

During the April mission there were discussions with officials from the Ministry of Finance, the senior management team of the Customs and Excise Department and stakeholders including brokers. This mission also held further discussions with Mr. Keil Connor, Comptroller of Customs.

The mission is grateful for the fruitful discussions held with the senior officials from the Ministry of Finance and the management team of the customs Department during the April mission and, also for the support and assistance of Mr. Stephen Mendes, CARTAC Regional Resident Customs Adviser.

This report comprises an executive summary and three sections: I. Background; II. Activities undertaken during the mission and III. Recommendations.

Executive Summary

The authorities in Anguilla sought technical assistance from CARTAC to conduct a comprehensive review of its customs legislation. It is recognized that the existing legal framework for customs is outdated and does not have the requisite foundation to support the modernization of Customs. The customs and Ministry of Finance have requested that the primary legislation be replaced by a completely new customs act based on the CARICOM model legislation for customs and, where appropriate to the context of Anguilla, also incorporates the provisions of the WTO TFA and WCO SAFE Framework.

In April 2022 CARTAC experts conducted a review of the existing legislation and submitted a report with a proposed structure for a new Customs legislation and key recommendations on the way forward. This mission is a follow up to the April 2022 mission.

The Customs Act should be based on principles rather than detailed and prescriptive customs procedures and requirements. It is important to define specific requirements and operational procedures in the customs regulations or published directives. This approach allows flexibility to improve requirements or procedures to mitigate emerging risks, to implement new procedures, to automate and modernize customs formalities, to make future adjustments and to keep the framework current.

The mission prepared a framework for a customs Act in line with the recommendations made in the CARTAC TA Assignment Report of April 2022. It includes the enactment of a new updated and modern legal framework for Customs, compliant with CARICOM model legislation, the WTO TFA, WCO SAFE Framework, the WCO RKC and other international agreements' binding obligations including provisions on the Customs valuation methods under the GATT Customs Valuation Code and aligned with good practices.

In a modern customs administration, it is key to move to a more efficient and informed administration of customs controls. This is a proactive approach aimed at increasing the compliance level of traders and to focus customs control on high-risk shipments and to simplify and expedite the release and movement of low-risk consignments. In this respect, proposed additions include provisions regarding automation of customs procedures, information sharing between customs and fiscal and law enforcement agencies, and with foreign customs administrations, which would be enabled by legislation, CMAAs and memoranda of understanding, implementation of risk management principles and obligations regarding confidentiality and disclosure of information.

A major challenge for the customs administration will be growing the capacity to be able to deliver all that has been added into the Act. for example, advance rulings, trusted trader programs, customs brokers, and drafting regulatory provisions which will be needed at the same time that the Act comes into force. There may be a steep learning curve for customs who will also need training to be able to successfully enable, administer and enforce the legislation. It is recommended that, following the enactment of the Act, the implementation of certain provisions should be staggered to allow for the attainment of the requisite institutional capacity.

The full automation of customs procedures and implementation of risk management principles may also be a challenge. However, automation is the foundation of any customs modernization program. It is the key to move to a more efficient and informed administration of customs controls.

Background

- 1. Modernizing customs legislation is considered a very high priority for the Ministry of Finance (MoF).** The MoF believe that the existing outdated customs legislation is a significant constraint that prevents the ministry and customs from achieving revenue targets and trade facilitation objectives. Additionally, the current penalty framework is considered to be outdated and inappropriate.
- 2. The MoF is keen for new legislation to be in place by the end of April 2023.** Thus, customs and Ministry of Finance have requested that the primary legislation be replaced by a completely new customs act based on the CARICOM model legislation for customs and, where appropriate to the context of Anguilla, also incorporates the provisions of the WTO TFA and WCO SAFE Framework.
- 3. Technical assistance was provided by CARTAC in April 2022 to review the existing Customs laws.** This consisted of a gap analysis to identify where the current law was not in harmony with the CARICOM model legislation for customs and the provisions of the WTO TFA and other international best practices. The analysis clearly showed that existing legislation does not support a risk-based approach or allow for the use of post clearance control techniques and does not have the foundation to support the modernization of Customs.
- 4. The April 2022 mission proposed a structure for the new legal framework of customs made a number of key recommendations on the way forward.** These included to enact a new updated and modern Legal Framework for Customs, compatible with the CARICOM model legislation, and aligned with the provisions of the WTO TFA, WCO SAFE Framework, the RKC and best practices to anticipate changes and innovations.
- 5. Special provisions were drafted for authorized economic operators / trusted trader program, and representation and customs brokers.** including the licensing requirements and procedures, obligations and liabilities, providing for the optional use of customs brokers and also including the optional authorization of in-house customs agents. It is recommended that the details on the requirements and procedures should be included in published Regulations or Directives to allow for flexibility for future amendments when necessary.

6. The mission prepared a synoptic table highlighted by color codes to summarize the required, recommended and suggested additions to the Customs Act. The Synoptic Table list the general principles of the main provisions highlighted green in the draft Customs Act (the main proposed changes to the Act). These are listed in three categories, red, being principles that are required to be implemented; yellow, being principles that are recommended to be implemented and, green being those principles that are suggested to be implemented.

Activities undertaken during the mission

7. The Customs Act should be based on principles rather than detailed and prescriptive customs procedures and requirements. It is important to define specific requirements and operational procedures in the customs regulations or published directives. This approach allows flexibility to improve requirements or procedures to mitigate emerging risks, to implement new procedures, to automate and modernize customs formalities, to make future adjustments and to keep the framework current.

8. The mission prepared a framework for a customs Act in line with the recommendations made in the CARTAC TA Assignment Report of April 2022. It includes the enactment of a new updated and modern legal framework for Customs, compliant with CARICOM model legislation, the WTO TFA, WCO SAFE Framework, the WCO RKC and other international agreements' binding obligations including provisions on the Customs valuation methods under the GATT Customs Valuation Code and aligned with good practices.

9. In a modern customs administration, it is key to move to a more efficient and informed administration of customs controls. This is a proactive approach aimed at increasing the compliance level of traders and to focus customs control on high-risk shipments and to simplify and expedite the release and movement of low-risk consignments. In this respect, proposed additions include provisions regarding automation of customs procedures, information sharing between customs and fiscal and law enforcement agencies, and with foreign customs administrations, which would be enabled by legislation, CMAAs and memoranda of understanding, implementation of risk management principles and obligations regarding confidentiality and disclosure of information.

10. The proposed framework ensured that the WTO TFA requirements and good international practices considered. Additions include provisions on advance rulings, cooperation and coordination between customs and other national agencies, single window, pre-arrival processing, and principles on fees and charges. The measures proposed in the draft Act when implemented would enhance the core customs control functions, allow for the more efficient mobilization of revenue, promote compliance, and facilitate trade.

11. Good international practices were considered to accommodate foreseeable evolutions and challenges for customs in the future. Included among these are the automated customs procedures, advance passenger and advance cargo information, electronic payment, use of technology, record-keeping requirements, the identification of all customs declarations, authorizations, licenses and any interaction between traders with the customs administration, with the trader's tax identification number, to maximize the efficiency of customs controls.

12. Special provisions were drafted for authorized economic operators / trusted trader program, and representation and customs brokers. including the licensing requirements and procedures, obligations and liabilities, providing for the optional use of customs brokers and also including the optional authorization of in-house customs agents. The details on the requirements and procedures should be included in published Regulations or Directives to allow for flexibility for future amendments when necessary.

13. The importance/significance of certain provisions that have been proposed in the draft Act are highlighted by color codes. In the draft Act the mission has highlighted in green the main proposed changes to the Customs Act; in red are the provisions recommended for the Regulations; in yellow are some of the penalties that are recommended to be increased. The draft Customs Act is annexed to this report.

14. The mission prepared a synoptic table highlighted by color codes to summarize the required, recommended and suggested additions to the Act. The Synoptic Table list the general principles of the main provisions highlighted green in the draft Act (the main proposed changes to the Act). These are listed in three categories, red, being principles that are required to be implemented "very important"; yellow, being principles that are recommended to be implemented "important" and, green being those principles that are suggested to be implemented "less important".

15. A major challenge for the customs administration will be growing the capacity to be able to deliver all that has been added into the Act. for example, advance rulings, trusted trader programs, customs brokers, and drafting regulatory provisions which will be needed at the same time that the Act comes into force. There may be a steep learning curve for customs who will also need training to be able to successfully enable, administer and enforce the legislation. It is recommended

that, following the enactment of the Act, the implementation of certain provisions should be staggered to allow for the attainment of the requisite institutional capacity.

16. The full automation of customs procedures and implementation of risk management principles may also be a challenge. However, automation is the foundation of any customs modernization program. It is the key to move to a more efficient and informed administration of customs controls.

17. The RKC, WTO TFA and the WCO all make provisions for the optional use of customs brokers. Different models have been promulgated including: i) Traders may conduct their own clearance themselves or use a customs broker; ii) A customs broker must be used except in some specific categories of transactions, such as, the threshold value, personal effects, postal items, commercial samples or other specific commodities; iii) Third parties may be used.

18. Special provisions were drafted for authorized economic operators / trusted trader program, and representation and customs brokers. The provisions in the draft Act include the licensing requirements and procedures, obligations and liabilities, providing for the optional use of customs brokers and also including the optional authorization of in-house customs agents. The provisions are based on extensive studies conducted by the WCO and other international organizations thus giving Anguilla the flexibility to adopt the most suitable model. It is recommended that the details on the requirements and procedures should be included in published Regulations or Directives to allow for flexibility for future amendments when necessary.

Key Recommendations

Box 1. Key Recommendations

- Enact a new updated and modern Legal Framework for Customs, compatible with the CARICOM model legislation, and aligned with the provisions of the WTO TFA, WCO SAFE Framework, the RKC and best practices to anticipate changes and innovations as presented in the draft Act which is annexed to this report.
- Draft and enact the necessary Regulations to support the Act and implement into force simultaneously with the Act.
- Following the enactment of the Act it is recommended that the implementation of certain provisions should be staggered to allow for the attainment of the requisite institutional capacity.
- A review be conducted of the existing penalty structure to the Act with a view towards updating the penalties to ensure penalties are commensurate to the degree and severity of the breach, dependent on the facts and circumstances of the case, and compliance oriented.
- That a briefing session of the mission should be conducted with senior management of the Customs to present the outcome of the work, to ensure an understanding of the proposed changes and with other stakeholders to explain the findings and the approach and scope of the draft Act.

Appendices

Appendix I. Synoptic Table of the Main Proposed Additions

Anguilla Customs Bill: Synoptic Table of Main Proposed Changes (October 2022)			
Part	Proposed Additions	Red: Required Yellow: Recommended Green: Suggested	Reference to International Agreements or to the corresponding Regulation
Part 2 – Administration	Customs Regulations. Authority to issue, amend or repeal regulations for the implementation, application, operation and interpretation of the Customs Act. (2-A)		
	General powers of the Comptroller to issue, amend or repeal Directives to determine the structure, competency, powers, responsibilities and duties of the personnel in the customs administration.		
	General powers of the Comptroller to issue, amend or repeal Directions, policies, guidelines and SOPs (3)		
	Principles on Fees and Charges. Shall be limited in amount to the approximate cost of the services rendered. (4-A)		TFA, Art. 6.1, 6.2 RKC, GA 3.2, 9.1, A.1, 19

	Confidentiality and non-disclosure –General principles on non-disclosure of confidential information. (5).		TFA, Art.12.5
	Exchange of information. Authority to enter into information sharing agreements and other written arrangements with domestic law enforcement agencies or foreign customs administration or law enforcement agencies, to promote co-operation and combat customs and other cross-border offences. (10-A)		TFA, Art. 12, RKC, G.A. 6.7, 7.1, Ch. 6.8
	Collaboration with other Agencies. Principle of Border Agency Collaboration. (10-B)		TFA, Art 8 RKC, GA 3
	Risk Management. Customs controls should primarily be based on Risk Management System that enables the customs administration and other agencies concentrate customs control and other relevant border controls on high-risk consignments and to expedite the release of low-risk consignments. (10- C)		TFA, Art. 7.4, RKC G.A. 6.3, 6.4, 6.5, 7
	Publication and availability of Information. Publication on internet of relevant information (legislation, procedures, formats, hours of service, etc) (10-D)		TFA, Art. 1.1, 1.2. RKC, General Annex (GA) Ch.4 (4.4), 9 (9.1, 9.2, 9.3)
	Enquiry points. Obligation to maintain enquiry points to answer reasonable questions on customs matters (10-D)		TFA, Art. 1.3 RKC, GA Ch9(9.4, 9.5, 9.6, 9.7, 9.8)

	<p>Opportunity to comment.</p> <p>Provide opportunities and an appropriate time period to any interested persons, to comment on the proposed introduction or amendment of new legislation (10-D)</p>		<p>TFA, Art. 2.1.</p> <p>RKC, GA 1.3, 9.2</p>
	<p>Information before entry into force. Publication in advance to entry into force to enable interested persons to take account of them (10-D)</p>		<p>TFA, Art 2.1</p> <p>RKC, GA Ch.9.2</p>
	<p>Consultation.</p> <p>Maintain a mechanism to regularly communicate with traders to provide them with an opportunity to raise emerging issues and provide their views on customs issues (10-D)</p>		<p>TFA 2.2</p> <p>RKC, GA 1.3, 9.4, 9.5, 9.6, 9.7</p>
	<p>Provision of information by the customs administration.</p> <p>Any person may request information concerning the application of the customs legislation to the customs administration (10-E)</p>		<p>TFA 2.3</p> <p>RKC, GA, Ch 9</p>
	<p>Automated exchange of information</p> <p>Use of electronic means for exchange of information between traders and customs authorities (including exchange of data, submission of entries and supporting documents, applications, decisions and rulings) and requirement of the tax identification number of the traders.</p> <p>(10-F)</p>		<p>RKC, GA, Ch.7</p>
	<p>Single window.</p>		<p>TFA, 10.4</p>

	The customs administration shall establish and maintain a single window system. (10-F)		RKC, 3.11, 7.2
	Customs Automated System For purposes of the registration, traders shall provide their tax identification number and shall be in compliance with customs and fiscal obligations(10-G)		RKC GA, Ch 7
	Data messages Admissibility and validity of data messages. (10-H)		RKC
	Advanced Rulings Legal basis to issue, modify or revoke Advance rulings on tariff classification, and origin of goods (10-I, J, K)		TFA, Art. 3.9(a) RKC, GA Ch.9
	Advance Rulings Legal basis to issue, modify or revoke Advance rulings on any other matter that may be determined in the Customs Regulations (10-I, J, K)		TFA 3.9(b)(iv) RKC, GA, Ch.9
	Authorized Economic Operators and Trusted Traders Creation of the statute of AEO / TTP (10-L, 10-M, 10-N))		WCO Safe Framework, TFA, Art. 7.7
	External Trade controls Obligation to comply with the legislation governing external trade, as well as laws governing external financial relations, flow of currency or negotiable monetary instruments, as well as legislation on the		

	<p>fight against money laundering and terrorism financing.</p> <p>Obligation to file a Report of international transportation of Currency and Monetary Instruments.</p> <p>(10-O)</p>		
	<p>Provision of information to the customs administration</p> <p>Obligation to provide information to the customs administration when requested.</p> <p>Responsibilities on the authenticity and accuracy of information and documents presented.</p>		
	<p>Obligations (10-Q)</p> <p>Compliance with customs and fiscal obligations</p>		
	<p>Representation</p> <p>Right to conduct customs operations directly (to self-file) or through a licensed customs broker or authorized in-house customs agent.</p> <p>Designation and revocation is made by electronic means.</p> <p>(10-R)</p>		<p>TFA, Art. 10.6</p> <p>RKC GA Ch. 8 (8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7)</p>
	<p>Customs brokers</p> <p>Requirements for customs brokers licensing (10-S)</p> <p>Obligations of customs brokers (10-T)</p> <p>Cancellation of license (10-W)</p>		<p>TFA, Art. 10.6</p>

	<p>In-house customs agents</p> <p>Requirements for authorization of in-house customs agent (10-U)</p> <p>Obligations of in-house customs agent (10-V)</p> <p>Cancellation of authorization (10-W)</p>		
NEW ARRIVAL AND DEPARTURE	Advance Passenger and Advance Cargo Information (18-A)		CARICOM Harmonized Customs Act, s.33
NEW CUSTOMS CLEARANCE PROCESS	<p>Persons submitting a customs declaration. (23-A)</p> <p>Optional use of a customs broker</p>		<p>TFA, Art. 10.6</p> <p>RKC Ch 3.6, 3.7, 3.8, Ch 8</p>
	<p>Submission of customs declaration (23-B)</p> <p>Right to inspect goods and draw samples;</p> <p>Electronic submission of the customs declaration and supporting documents;</p> <p>The customs declaration shall contain the tax identification number of the importer or exporter;</p> <p>Legal basis for oral, simplified or provisional declarations;</p> <p>Pre-arrival processing;</p> <p>Electronic payment.</p>		<p>TFA, Art. 7.1, 7.2,</p>

	Acceptance of customs declaration (23-C) Acceptance of the customs declaration by the electronic system		Good international practice
	Amendment of a customs declaration (23-D)		Good international practice
	Examination and sampling of goods (23-G) Use of automated selectivity control based on risk management Use of technological equipment or systems Coordination with other agencies to carry out examination of goods Examinations outside customs premises and outside official working hours.		TFA, Art. 7, 8, WCO Safe Framework Std 3, RKC 3.33, 3.34, 3.35, 3.36, 3.38, Ch. 6.4, 6.9, 7.9
NEW IMPORTATION AND EXPORTATION BY POST AND EXPRESS SHIPMENTS	Express shipments Authorization of express delivery companies Simplified procedures for express shipments (41-B, 41-C, 41-D, 41-E, 41-F, 41-G, 41-H)		TFA, Art. 7.8
Part 8 Warehousing	Special facilities for the storage of special categories of goods. 50-A.		RKC, D.1

Duties, Drawback, Customs debts, etc - Part 9	Determination of amount of import or export duties and taxes. 67-A. Date of payment of duty. 68-A. Refunds. 68-B. Customs debt. 69 -A. to 69-G.		GATT
	Special provisions. 69. Relief from duty on imported goods and other relief. 70.		
New Valuation of Goods for customs purposes	Customs valuation methods under the GATT Customs Valuation Code. (82-A to 82 -R) Procedure when there are reasons to doubt the truth or accuracy of particulars or documents Value of goods for export (The Act in force provides for the normal value)		GATT CVA, Notes of Interpretation and Decisions taken by the Committee on Customs Valuation (6.1)
New	Tariff Classification of Goods (81-M, 82-N))		HS of the WCO, General Rules of

Tariff classification of Goods	Application of General Rules of Interpretation of the HS		Interpretation of the HS
New Origin of goods	Origin of Goods (82-O, 82-P, 82-Q, 82-R) Preferential and non-preferential origin		RKC, Annex K
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Appendix II. Draft Customs Act

Anguilla

Customs Act

R.S.A. c. C169

Red text – proposed to be moved out of Bill and into regulations or published policies or directives.

Green text – proposed new legislative provisions to meet TFA, RKC requirements/best practices and to harmonize with the CARICOM Model Harmonized Customs Act.

DRAFT CUSTOMS ACT

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CUSTOMS ACT**PART 1
PRELIMINARY****Short title**

X. This Act may be cited as the Customs Act, Revised Statutes of Anguilla, Chapter C 169.

Object and Scope of Application

X. (1) This Act and the Regulations enacted for its application shall constitute the customs regulation in force and shall be binding in Anguilla.

(2) This Act lays down the general rules and procedures applicable to goods, including conveyances, brought into or taken out of Anguilla.

Interpretation

1. (1) In this Act, unless the context otherwise requires, the following expressions have the following meanings respectively—

“Act” includes Ordinance;

“agent” means any person appointed an agent under section 17;

“aircraft” includes any balloon (whether captive or free), kite, glider, airship, helicopter or other flying machine;

“airport” means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft;

“approved wharf” means any place approved under section 12(1);

“assigned matter” means any matter in relation to which the Comptroller is for the time being required in pursuance of any enactment, to perform any duty;

“A.T.A. Carnet” means a document issued by an internationally approved Chamber of Commerce covering the temporary import of goods and giving security for the re-export of the goods in an unchanged condition within the period therein prescribed;

“boarding station” means any place directed to be a boarding station under section 11(2);

“cargo” means any goods, other than stores, crew members’ effects and passengers’ accompanied baggage carried on board a vessel or aircraft;

“chargeable goods” means goods chargeable with any duty, tax or any other impost on importation;

“claimant”, in relation to proceedings for the condemnation of anything as being liable to forfeiture, means any person claiming that that thing is not liable to forfeiture;

“coasting aircraft” and “coasting vessel” have the meaning given to them by section 42(1);

“commander”, in relation to an aircraft, includes any person having or taking charge or command of that aircraft;

“Comptroller” means the Comptroller of Customs;

“computer” means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with

such device, but does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device;

(Act 15/2010, s. 2)

“container” includes any bundle or package and any box, cask or other receptacle whatsoever;

“crew” means any person employed in duties on board any vessel or aircraft during a voyage or flight;

“Customs” means the Customs Department of the Ministry of Finance, and includes a reference to any officer;

(Act 15/2010, s. 2)

“customs airport” means any place prescribed as such or appointed under section 13;

“customs area” means any place approved under section 14(1);

“customs enactment” means the provisions of this Act, any subsidiary legislation made under it and any other enactment that relates to an assigned matter;

“customs port” means any place appointed by the Governor in Council under section 11;

“customs warehouse” means any place appointed as such under section 62;

“declaration” means any information delivered to customs, whether orally or in a document, by a person or their agent and includes an entry;

(Act 15/2010, s. 2)

“document” includes—

- (a) a map, plan, graph, drawing or photograph;
- (b) any information in writing relating directly or indirectly to goods which are imported, exported, in transit or transshipment;
- (c) any declaration in writing required by the Comptroller;
- (d) information that is inscribed, stored or otherwise maintained on a tangible medium or that is stored in an electronic or any other medium and is accessible in a perceivable form;
- (e) anything from which sounds or data, other than visual images, are capable, with or without the aid of a device, of being reproduced;
- (f) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced therefrom;
- (g) any other device by means of which information is recorded or stored;

(h) a copy, reproduction or duplicate of a document or part of such copy, reproduction or duplicate; and

(i) anything on which there is writing;

(Act 15/2010, s. 2)

“\$” means the Eastern Caribbean dollar;

“drawback” means a refund of all or part of any duty of customs authorised by any enactment in respect of goods exported or used in any particular manner;

“drawback goods” means goods in the case of which a claim for drawback has been or is to be made;

“dutiable goods” means goods of a class or description subject to any duty of customs whether or not these goods are in fact chargeable with that duty, and whether or not that duty has been paid thereon;

“duty” means a duty of customs chargeable on goods on importation or exportation and includes a surcharge on duty;

“electronic document” means a document processed and maintained by electronic means;

(Act 15/2010, s. 2)

“electronic signature” means anything in electronic form which—

(a) is incorporated into, or otherwise logically associated with, any electronic document;

(b) is generated by the signatory or other source of the electronic document; and

(c) is used for the purpose of facilitating, by means of a link between the signatory or other source and the electronic document, the establishment of the authenticity of the communication, document or data, the establishment of its integrity, or both;

(Act 15/2010, s. 2)

“entry”, in relation to the importation or exportation of goods, means any document delivered to Customs in accordance with section 24(1) or section 34(1) respectively and, in relation to vessels or aircraft, means any document delivered to Customs in accordance with section 35(1);

(Act 15/2010, s. 2)

“entry by bill of sight” means an entry made in accordance with section 25(3);

“examination station” means any place approved under section 15(1);

“export” means to take out or cause to be taken out or attempt to take out of Anguilla;

“exporter”, in relation to goods for exportation or for use as stores, includes the shipper of the goods and any person performing, in relation to any aircraft, functions corresponding with those of a shipper;

“franchise” means an agreement between the Government of Anguilla and any person to operate a service or business on conditions mutually agreed between the Government and the holder of the franchise;

“goods” include merchandise stores, baggage and livestock;

“home use”, with reference to imported goods, means goods intended for consumption, use or retention in Anguilla;

“ICT” means the integrated customs tariff as may be prescribed under section 76;

“import” means to bring or cause to be brought into Anguilla or the territorial sea of Anguilla;

“importer”, in relation to any goods at any time between their importation and the time when they are delivered out of customs’ charge, includes any owner or other person for the time being possessed of or beneficially interested in the goods;

“information” includes electronic records, data, text, images, sounds, codes, computer programs, software and databases;

(Act 15/2010, s. 2)

“key”, in relation to any electronic document, means any key, code, password, algorithm or other data the use of which, with or without other keys—

(a) allows access to the electronic document; or

(b) facilitates the putting of the electronic document into an intelligible form;

(Act 15/2010, s. 2)

“land” and “landing”, in relation to the landing of aircraft, includes alighting on water;

“letter” means an item transmitted at the letter rate of postage;

“master”, in relation to a vessel, includes any person having or taking charge or command of the vessel;

“Minister” means the Minister charged with the responsibility of customs;

“net tonnage”, in relation to the weight of a vessel, means the net tonnage as calculated by the Merchant Shipping (Tonnage) Regulations, 1982;

“night” means the interval between 7:00 p.m. of any day and 5:00 a.m. of the following day;

“occupier”, in relation to any warehouse, means the person who has given security to the Comptroller in respect of those premises;

“officer” means —

(a) the Comptroller; and

(b) a person appointed under section 4(2);

(Act 15/2010, s. 2)

“owner”, in relation to a vessel or an aircraft, includes the operator of that vessel or aircraft;

“passenger” means any person travelling on or arriving from or departing from any vessel or aircraft, but does not include a crew member;

“passenger’s accompanied baggage” means personal and household effects including currency, carried for a passenger on a vessel or aircraft whether in his personal possession or not, so long as it is not carried under a contract of carriage or other similar agreement and does not include any article intended for sale, exchange or use for commercial purposes;

“perfect entry” means any entry made in accordance with section 24 or 55;

“police officer” means any member of the Royal Anguilla Police Force;

“post” includes all postal communications by land, by water or by air;

“Postmaster” has the same meaning as in the Post Office Act;

“postal package” includes postal packets and postal parcels;

“postal packet” means all packages sent by post under one kilogram in weight;

“postal parcel” means all packages sent by post over one kilogram in weight;

“prohibited” or “restricted goods” means goods of a class or description of which the importation, exportation or carriage coastwise is for the time being prohibited or restricted under or by virtue of any enactment;

“proper”, in relation to the person by, with or to whom or the place at which anything is to be done, means the person or place appointed or authorised by the Comptroller in that behalf;

“proprietor”, in relation to any goods, includes any owner, importer, exporter, shipper or other person for the time being possessed of or beneficially interested in those goods;

“same state”, with reference to re-exported goods, means goods that after original import have not been used otherwise than by removal from a customs area to the importer’s premises or changed otherwise than by assembly from a knocked-down state, cleaning, testing or the addition of identifiable accessories that do not change their basic form or character;

“shipment” includes loading into a vessel or an aircraft, and “shipped” and cognate expressions shall be construed accordingly;

“signature” includes an electronic signature and a key;

(Act 15/2010, s. 2)

“stores” means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles or equipment, whether or not for immediate fitting;

“territorial sea” means the area of sea within 3 nautical miles from the shoreline of Anguilla;

“transit” or “transshipment”, in relation to the entry of goods, means transit through Anguilla or transshipment with a view to the re-exportation of goods in question;

“transit shed” means any place approved under section 16(1);

“uncustomed goods” means imported goods or goods intended for export which have not been cleared from customs charge;

“vehicle” includes any conveyance or carriage or any cart or wagon and any trailer attached to any such vehicle;

“vessel” includes any ship, hovercraft or boat;

“warehouse”, except in the expression “customs warehouse”, means any place of security approved by the Comptroller under section 50(1) and “warehoused” and cognate expressions shall be construed accordingly;

“warehousing regulations” means any regulations made under section 51(1);

“warranty” means any form of guarantee or contractual promise whereby the supplier of the goods undertakes to replace free of charge or fully compensate for any defective parts arising within an agreed period of time from the date of sale or delivery to the buyer thereof;

“writing” includes electronically generated information or data which is accessible and capable of retention for subsequent reference.

(Act 15/2010, s. 2)

(2) Where a document is required or permitted to be in writing, or is described as being written, that requirement, permission or description may be met by information in the form of an electronic document.

(Act 15/2010, s. 2)

(3) Where a document is required or permitted to be delivered to Customs, that requirement or permission may be met by delivery of it in the form of an electronic document in the format and by means of delivery acceptable to the Comptroller.

(Act 15/2010, s. 2)

(4) In the case of an entry, the time of delivery of the entry is deemed to be the date on which a registration number is issued in respect of that entry.

(Act 15/2010, s. 2)

Time of importation and exportation

2. (1) This section shall have effect for the purposes of this Act and of any other enactment relating to customs.

(2) The time of importation of any goods, other than prohibited or restricted goods, is deemed to be—

- (a) where the goods are brought by sea, the time when the vessel carrying them comes within the territorial sea; and
- (b) when the goods are brought by air, the time when the aircraft carrying them lands in Anguilla or the time when the goods are unloaded in Anguilla whichever is the earlier;

but, in the case of goods brought by sea of which entry is not required under section 24, the time of importation is deemed to be the time when the vessel carrying them came within the territorial sea at which the goods are discharged.

(3) The time of importation of prohibited or restricted goods is deemed to be—

- (a) when the goods are brought by sea, the time when the vessel carrying them comes within the territorial sea; and
- (b) when the goods are brought by air, the time when the aircraft carrying them lands in Anguilla or when the goods are unloaded or when the goods, if airdropped, land in Anguilla or in her territorial sea, whichever is earlier.

(4) The time of exportation of any goods from Anguilla is deemed to be, where the goods are exported by sea or air, the time when the goods are shipped for exportation; but, in the case of goods of a class or description, with respect to the exportation of which any prohibition or restriction is for the time being in force under or by virtue of any enactment, that are exported by sea or by air, the time of exportation is deemed to be the time when the exporting vessel or aircraft departs from the last port or customs airport at which it is cleared before departing for a destination outside of Anguilla.

(5) A vessel is deemed to have arrived at or departed from a port at the time when the vessel comes within or leaves the limit of that port, as the case may be.

PART 2

ADMINISTRATION

General power to issue Regulations

2-A. (1) For the efficient interpretation and application of any matter covered by this Act, the Governor in Council shall issue Regulations for the implementation, application, operation and interpretation of this Act and may amend or repeal any regulation issued under this Act.

(2) Regulations shall be published in the Gazette, and have the force of law and be valid and effectual as if it were herein enacted, on the date specified therein.

(3) Regulations may include any matter covered by this Act, including but not limited to -

- (a) the determination of any fine that may be imposed under this Act or by any regulation made thereunder;
- (b) the determination of fees or charges to be levied in respect of any services or supplies provided by customs;
- (c) any operational procedure or requirement including but not limited to –
 - (i) the days on which and the hours between which offices of Customs are to be opened or officers are to be available for the performance of particular duties;

- (ii) the appointment of customs ports, boarding stations and customs airports;
- (ii) the pleasure crafts and small crafts, arrival of vessels and aircraft and the unloading of imported goods, the loading of goods and departing vessels and aircraft, the coasting trade, and the movement of uncleared goods within or between port or airport and other places;
- (iv) warehouses and warehoused goods and postal packets and express shipments;
- (d) any other matter covered by this Act; and
- (e) any provision as he may consider necessary for the purpose of providing for any unforeseen or special circumstance or of resolving, determining or adjusting any matter that may arise in relation to the application of this Act or in respect of which no provision or no effective provision is made in this Act.

General power to issue Directions, Policies, Guidelines and SOPs

3. (1) The Comptroller shall -

- (a) issue Directives to determine the structure, competency, powers, responsibilities and duties of the personnel within the Customs administration and may amend or repeal those Directives.
- (b) issue and keep up to date directions, policies, guidelines and standard operating procedures in respect of customs and trade related matters covered in this Act and the Regulations, including the prescription of forms, which shall be published in the Official Gazette.
- (c) subject to the general control of the Governor, be charged with the duty of collecting and accounting for and otherwise managing the revenue of customs.
- (d) be responsible for the administration of this Act and any other enactment relating to any assigned matter.

Comptroller of Customs

~~3. (1) The Comptroller shall, subject to the general control of the Governor, be charged with the duty of collecting and accounting for and otherwise managing the revenue of customs.~~

~~(2) The Comptroller shall be responsible for the administration of this Act and for any other enactment relating to any assigned matter.~~

Delegation and appointment by Comptroller

4. (1) Any act required or authorised by any customs enactment to be done by the Comptroller may be done by any officer authorised generally or specifically in that behalf, in writing or otherwise, by the Comptroller, except that where, for any reason, the post of Comptroller for any time is unfilled, any authorisation given by a previous Comptroller which has not been revoked shall continue in force until revoked by any person subsequently appointed as Comptroller.

(2) Any person appointed by the order or with the concurrence of the Comptroller (whether previously or subsequently expressed) to perform any act or duty relating to an assigned matter which by law may or is required to be performed by an officer is deemed to be an officer.

(3) Any person deemed by virtue of subsection (2) to be an officer shall have the powers of an officer in relation to the act or duty to be performed by him.

(4) If any officer or other person who has been authorised in writing by the Comptroller to do anything fails, when required to do so by the Comptroller, to return to him that written authority, he is guilty of an offence and is liable to a fine of \$10,000.

(5) Where any act is required by an enactment to be done in any particular place, it shall be deemed to be done in such place if done in any other place authorised by the Comptroller for that purpose.

(6) The Comptroller may give directions specifying the forms in relation to any assigned matter as he thinks fit.

Fees and charges

4-A. (1) Fees and charges for customs processing, necessary for the provision of customs services, shall be published in the Official Gazette, indicating the reason for such fees and charges, the responsible authority and time and form or payment.

(2) Fees and charges shall not be applied for the performance of customs controls, any other act in connection with the application of customs law during the official working hours of their respective customs offices or for the provision of information by customs authorities upon request, unless specific expense is incurred by the customs authorities.

(3) Fees and charges shall be limited in amount to the approximate cost of the services rendered on or in connection with the specific operation in question and are not required to be linked to a specific import or export operation provided they are levied for services connected to the customs processing of goods.

Obligation of secrecy

~~5. (1) Subject to subsection (2), any person appointed or employed in carrying out any requirement of, or any duty imposed or any power granted by, any customs enactment, who —~~

~~(a) discloses to an unauthorised person any document, information or confidential instruction which has come into his possession or to his knowledge in the course of his duties; or~~

~~(b) permits any unauthorised person to have access to any records in his possession or custody;~~

~~is guilty of an offence and is liable to a fine of \$20,000 or to imprisonment for a term of 2 years, or to both and may be arrested.~~

~~(2) Nothing in subsection (1) shall prevent the disclosure by any person of any document, information or confidential instruction where that disclosure is authorised by or under any Act by the Comptroller.~~

5. Confidentiality and Non-disclosure

(1) The information contained in a customs declaration, supporting documents and any information or documents obtained by any customs officer in the course of performing its duties or which is provided on a basis of confidentiality shall be regarded as confidential information and shall not be disclosed without the express permission of the person or authority that provided it.

(2) Notwithstanding subsection (1), nothing in this section prevents the disclosure of confidential information or production of any document containing confidential information, where the customs administration are compelled or authorized to do so pursuant to any applicable provisions in force, to -

(a) the Anguilla Tax Administration, another government agency or law enforcement agency, for the purposes of carrying out their official duties and in accordance with a signed Memorandum of Understanding with Customs;

(b) the customs administration and other competent authorities of foreign countries, for the purpose of carrying out their official duties within the framework of an international agreement to which Anguilla is a Party;

(c) a court of competent jurisdiction, in proceedings regarding liability under this Act, or the responsibility of any person for tax violations or offences, or in a criminal or civil matter;

(d) any person, with the consent of the owner, importer or exporter, as the case may be.

(3) A person who discloses confidential information contrary to this section is guilty of an offence punishable on summary conviction and liable to a fine in accordance with the Regulations.

Times of attendance of officers

6. (1) The days on which and the hours between which offices of Customs are to be opened or officers are to be available for the performance of particular duties shall be such as the Governor in Council may by regulation prescribe.

(2) Any request for an officer to perform any duty outside the normal hours of attendance of officers shall be made in writing to the Comptroller who may grant such request if he thinks fit.

(3) The fees payable for the performance of duties outside the hours prescribed by regulation under subsection (1) shall be such as the Governor in Council may by regulation prescribe.

Assistance to be rendered by the police

7. (1) It shall be the duty of every police officer to assist in the enforcement of the law relating to any assigned matter.

(2) In relation to any assigned matter, every officer shall have the same powers, authorities and privileges as are given by law to police officers.

Officers to disclose interest in certain vessels, aircraft or merchandise

8. Any officer authorised by the Comptroller by virtue of section 4(1) who fails to disclose to the Comptroller that he—

- (a) owns either in whole or in part any vessel or aircraft engaged in trade;
- (b) acts on behalf of the owner of any vessel or aircraft engaged in trade;
- (c) imports or is concerned in the importation of any merchandise for sale or re-exportation; or
- (d) owns either in whole or in part or acts on behalf of the owner of any other business subject to customs control;

is guilty of an offence and is liable to a fine of \$10,000.

Directions

~~9. Any direction by the Comptroller given under this Act or any regulation made under it—~~

- ~~(a) shall be published in the Gazette;~~
- ~~(b) may provide for different circumstances;~~
- ~~(c) may be varied or revoked by any subsequent direction; and~~
- ~~(d) unless varied or revoked by a subsequent direction, shall continue to apply notwithstanding that the person who gave the direction is no longer the Comptroller or an officer or, for any other reason, no longer has the authority to give such a direction.~~

Application to government vessels and aircraft

10. The requirements imposed by Parts 4, 6 and 7 do not apply—

- (a) to any vessel or aircraft owned by or in the service of the Government of Anguilla when being used for the purpose of customs, police, fisheries, coastguard or the supervision and management of harbours and piers; and
- (b) where the Comptroller so directs, and for such periods and subject to such conditions and restrictions as he may see fit to impose, to any vessel or aircraft owned by or in the service of the government of any other country.

GENERAL

Information Sharing Agreements

10-A. To promote cooperation and combat customs and other cross-border offences, the Comptroller has the power to enter into information sharing agreements and other written arrangements, including memoranda of understanding with any domestic law enforcement agency or mutual assistance agreements with foreign customs administration or law enforcement agencies, to promote co-operation and combat customs and other cross-border offences.

Collaboration with Other Agencies

10-B. (1) The powers related to the importation, exportation, transit or transshipment of goods is under the authority of the customs administration. Other relevant agencies within their respective competencies, shall assist the customs authorities whenever it is necessary or when they are required to do so.

(2) Where the same goods are to be put under controls other than customs controls by an authority other than customs, the Customs Administration shall take steps to ensure that, as far as possible, controls performed by other authorities on goods subject to customs control are conducted under customs coordination, in close collaboration with those authorities, and whenever possible at the same time and in the same location.

(3) In order to minimize risk and fight fraud, the customs administration and other competent authorities may exchange with each other, information obtained regarding the entry, exit, transit, storage and end use of goods in circulation between Anguilla and other countries, the presence and movement of goods under the end use regime, as well as the outcomes of verifications carried out, within the framework of Mutual Administrative Agreements.

Risk Management

10-C. The customs administration shall adopt and maintain a risk management system for assessment and targeting, based on risk analysis using electronic data processing techniques, through appropriate selectivity criteria to focus inspection activities, customs control and other relevant border controls on high-risk consignments and simplify the release and movement of low-risk consignments.

Publication

10-D. The Customs administration shall

(a) ensure that all relevant information of general application pertaining to customs legislation is readily available to any interested person free of charge and maintain enquiry points to answer reasonable enquiries of governments, traders and other interested parties on customs and trade related matters;

(b) make the revised information readily available well in advance of the entry into force of any changes, when information previously made available is revised by way of changes in this Act, the Regulations, administrative rulings of general application, or other enactments, to enable interested persons to take account of them, unless advance notice is precluded;

(c) provide opportunities and an appropriate time period to any interested persons, to comment on the proposed introduction or amendment of this Act, the Regulations, administrative rulings of general application or other enactments;

(d) maintain a mechanism to regularly communicate with traders. These mechanism shall provide traders with an opportunity to raise emerging issues and provide their views to the customs administration on procedures related to the movement, release, and clearance of goods; and

(e) use information technology to enhance the provision of information.

Provision of information by the customs administration

10-E. Any person may request information concerning the application of this Act and the Regulations from the customs administration. Such a request may be refused where it does not relate to an activity pertaining to international trade in goods that is actually envisaged.

Automation of Data Processing

10-F. (1) Except as otherwise provided, all exchange of information between the customs administration and economic operators, and the storage of such data, shall be made using electronic data-processing techniques and shall include the tax identification number of the economic operator.

(2) The regulations shall prescribe the cases and conditions under which information required may be communicated on paper or by means other than electronically.

(3) The customs administration shall establish and maintain a single window system that enables the electronic submission through a single-entry point of the documents and data required for importation, exportation and transit of goods.

Customs Automated System

10-G. (1) The electronic system known as ASYCUDA, shall be used for the submission and processing of the advance cargo manifest, customs declarations, and any other procedures, in accordance with the Regulations.

(2) All persons involved in the processing of customs operations, shall submit an application to be registered as an authorized user of the System and to obtain an authentication code or electronic signature to use the System. For purposes of the registration, traders shall provide their tax identification number and shall be in compliance with customs and fiscal obligations.

(3) The registration as an authorized user of the System may be suspended or revoked, for the reasons and following the procedure set out in the Regulations.

(4) The customs administration shall take such security and control measures as are reasonable practicable to ensure the integrity of any data message processed and the System, prevent unauthorized access to, prevent illegal interception or interruption of any data message or information transmitted to or processed by the System, prevent loss, destruction, alteration, modification or disclosure of any record or information stored in the System, and prevent other misuse of any information stored in the System.

Data messages

10-H. (1) Where a data message is transmitted to the System using an authorization code or electronic signature, the transmission of the data message is evidence that the data message was transmitted by the authorized user to whom the code was issued.

(2) An electronic record of a data message made to or from the System is admissible in evidence, and shall be received as prima facie evidence, that the person whose authentication code or electronic signature was used for the purpose of the data message, made the statements contained in the data message.

(3) Messages transmitted to or received through the System, as well as registers and records for cases where information is communicated on paper or by other means, shall be stored for a period of not less than 5 years from the date the message

was sent or received, unless required in legal proceedings in which case it shall be kept for the duration of those proceedings.

ADVANCE RULINGS

Issuance and Scope of Advance Rulings

10-I. (1) The customs administration shall issue a written advance ruling, prior to the importation of a good, on the basis of the facts and circumstances presented, that sets forth the treatment that the customs administration shall provide to the good at the time of importation, with regard to:

(a) tariff classification;

~~(b) the application of customs valuation criteria for a particular case;~~

(b) the origin of a good;

(c) any other matter, in accordance with the Regulations.

(2) The customs administration may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of a post clearance audit or an administrative, judicial or quasi-judicial review or appeal. In this case, the customs authority shall notify in writing the person requesting the ruling.

Procedure to issue Advance Rulings

10-J. (1) The customs administration

(a) may, at any time during the course of an evaluation of a request for an advance ruling, request supplemental information from the person requesting the ruling or a sample of the good for which the advance ruling was requested;

(b) shall issue the ruling as expeditiously as possible, and in no case later than 120 days after obtaining all necessary information from the person requesting the advance ruling;

(c) shall, where the advance ruling is unfavorable to the person requesting it, provide to that person a full explanation of the rationale for the ruling.

(d) shall provide to any person requesting an advance ruling the same treatment, including the same interpretation and application of the relevant provisions, as it provided to any other person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all material respects.

(e) in issuing an advance ruling, shall take into account the facts and circumstances provided by the person requesting the ruling and shall provide a full explanation of the rationale and legal basis for the ruling.

(f) make publicly available any information on advance rulings that may be significant to grant consistent interpretation, application or treatment to applicants, taking into account the need to protect commercially confidential information.

(2) Advance rulings shall take effect on the date they are issued or on a later date specified in the ruling and shall be valid for a period of one (1) year from the date on which the advance ruling takes effect.

Modification or Revocation of Advance Rulings

10-K. (1) An advance ruling may be modified or revoked if there is a change in the law, facts or circumstances on which the ruling was based, if the ruling was based on inaccurate or false information, or on an error of fact, to conform with a modification to the legislation or with a judicial decision.

(2) Any modification or revocation of an advance ruling shall be effective on the date on which the modification or revocation is issued, or on such later date as may be specified therein and shall not be applied to importations of a good that occurred prior to that date, unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions, or misrepresented or omitted material facts or circumstances on which the ruling was based.

(3) When the person to whom an advance ruling was issued demonstrates that it used reasonable care and acted in good faith in presenting the facts and circumstances on which the ruling was based, and when the customs administration determines that the ruling was based on incorrect information, the person to whom the ruling was issued shall not be subject to penalties.

(4) When the person to whom the ruling was issued has misrepresented or omitted material facts or circumstances on which the ruling is based or has failed to act in accordance with the terms and conditions of the ruling, the person is liable to a penalty in accordance with the Regulations.

AUTHORIZED ECONOMIC OPERATORS AND TRUSTED TRADERS

Criteria for the grant of status of Authorized Economic Operators and Trusted Traders

10-L. (1) The criteria to grant the status of authorized economic operator (trusted trader component) shall be the following:

(a) the absence of any serious infringement or repeated infringements of this Act and the Regulations and taxation rules, including no record of serious criminal offences relating to the economic activity of the applicant;

(b) the demonstration by the applicant of a high level of control of his or her operations and of the flow of goods, by means of a system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls;

(c) financial solvency, which shall be deemed to be proven where the applicant has good financial standing, which enables him or her to fulfil his or her commitments, with due regard to the characteristics of the type of business activity concerned;

(d) conformity with practical standards of competence or professional qualifications directly related to the activity carried out;

(2) With regard to the authorized economic operator (safety component), in addition to the criteria in paragraph 1 above, the existence of appropriate security and safety standards, shall be considered as fulfilled where the applicant demonstrates that he or she maintains appropriate measures to ensure the security and safety of the international supply chain including in the areas of physical integrity and access controls, logistical processes and handling of specific types of goods, personnel and business partners.

(3) The customs administration shall verify that applicants for the status of authorized economic operator meet the criteria in paragraph 2 above by conducting an audit at their premises.

(4) An authorized economic operator shall inform the Comptroller of any occurrence arising after the grant of the status and which is likely to affect the maintenance of the status.

Simplification measures

10-M. (1) Authorized economic operators may benefit from simplification measures notably:

- (a) reduced documentary and information requirements;
 - (b) reduced rate of physical inspection and control;
 - (c) rapid processing and release of goods;
 - (d) deferred payment of duties, taxes, fees and charges;
 - (e) use of general guarantees or reduced guarantees;
 - (f) a single customs declaration for all imports or exports over a given period ; and
 - (g) clearance of goods at the premises of the authorized economic operator or other place authorized by the customs authorities;
 - (h) priority inspection in case of selection for examination.
- (2) The authorized economic operator shall be accorded more favorable treatment than other economic operators as regards customs controls, depending on the type of authorization granted, including a reduction in physical and documentary checks.
- (3) The customs administration shall grant the benefits deriving from the status of authorized economic operator to persons established in other countries on the basis of reciprocity, in accordance with International Agreements and as provided in the Regulations.

Cancelation of authorization

- 10-N. (1) The customs administration shall monitor authorized economic operators and may suspend or cancel the authorization if at any time the operator ceases to meet the criteria for the authorization or for any other infringement that may be set out in the Regulations.
- (2) Prior to issuing a determination to suspend or cancel the authorization, the customs administration shall provide the authorized economic operator with a notice of intent to suspend or cancel the authorization in writing and a period of at least 10 days to respond. The final determination shall be in writing and shall include the legal basis for the determination.

External trade controls

- 10-O. (1) In addition to requirements set out in this Act, importers, exporters and travelers shall comply with the legislation governing external trade, external financial relations, flow of currency or negotiable monetary instruments, and the fight against money laundering and terrorism financing.
- (2) Any person arriving or departing Anguilla, carrying more than \$10,000 US dollars in currency or negotiable monetary instruments, must file a Report of International Transportation of Currency and Monetary Instruments at any port of entry or departure at the time of entry or departure in accordance with the Regulations.
- (3) Family members traveling together cannot divide the currency between each other to avoid declaring the currency.
- (4) If a person or family fails to declare the monetary instruments in amounts more than \$10,000 US dollars, the monetary instruments may be subject to forfeiture and could result in civil and, or criminal penalties.

RIGHTS AND OBLIGATIONS OF PERSONS

Provision of information to the customs administration

10-P. (1) Any person required to provide information under this Act or the Regulations, shall, at the request of the customs administration and within any time-limit specified,

- (a) provide all the required documents and information, in an appropriate form, and
 - (b) provide true, accurate and complete information, answer truthfully any question posed by a customs officer and shall answer truthfully any question posed by a customs officer.
- (2) The customs administration shall require the minimum documents and information necessary to ensure all requirements and obligations under this Act and the Regulations have been met, to enable the accurate assessment and collection of duty and tax, the compilation of statistics, and for the administration and enforcement of this Act and the Regulations.
- (3) The submission of a customs declaration, notification, a request for authorization or any other decision, or the provision of any information in any form required by, or given to the customs administration, renders the person concerned responsible for:
- (a) the accuracy and completeness of the information given in the declaration, notification or application;
 - (b) the authenticity, accuracy and validity of any document supporting the declaration, notification or application;
 - (c) where applicable, compliance with all of the obligations relating to the placing of goods under the customs procedure concerned, or to the conduct of the authorized operations.
- (4) Where the declaration, notification or application submitted or information provided is submitted by a customs representative of the person concerned, the representative shall also be bound by the obligations set out in this section.

Obligations

10-Q. (1) Except as otherwise provided, any person who introduces goods into or extracts them from Anguilla, either their owners, holders, consignees, remittents, importers, exporters, customs brokers, carriers, warehouse licensees, managers of a customs controlled area other agents or any person involved in the introduction, extraction, transportation, custody, storage, handling, or coasting trade of those goods, or a person who conducts business under any customs enactment, shall

- (a) be in compliance with customs and fiscal obligations.
- (b) maintain records and render them for examination and inspection by the customs administration when requested, in accordance with this Act;
- (c) maintain a computerized accounting system when required by the Regulations ;
- (d) maintain technological and any other controls required by the Regulations ;
- (e) ensure compliance with security and safety standards and procedures when required by the Regulations ;
- (f) ensure data is transmitted timely and accurately in accordance with the Regulations ;
- (g) ensure timely and accurately assessment and payment of duties ;

(h) make amendments or corrections and pay any duties owed when he has reason to believe that the information is not correct, in accordance with the terms and conditions provided in this Act, the Regulations and other enactments ;

(i) ensure compliance with any other obligation and requirements provided in this Act, the Regulations or other customs related enactments.

(2) Any person who, without reasonable cause, fails to comply with a requirement imposed on him under subsection (1) is guilty of an offence and is liable to a fine.

REPRESENTATION

Representation

10-R. (1) For purposes of section 23-A, the customs declaration shall be filed by the declarant, a licensed customs broker or an authorized in-house customs agent designated by the declarant, on his name and on his behalf, in the cases and subject to the terms and conditions set forth in the Regulations.

(5) The designation and revocation of the powers granted to a customs broker or an in-house customs agent by the declarant, to act on his behalf, shall be made before the customs administration by electronic means, may be made at any time, in the terms and conditions set in the Regulations.

(6) In the case of suspension, cancellation or termination of a license of a customs broker, the customs broker may not initiate new operations, but may only conclude the operations initiated at the date on which the cancellation or suspension is notified.

(7) In the case of decease or disability of the customs broker, the employee designated by him under section X, shall notify the customs administration and submit a copy of the health or death certificate within X days from the event, and will be able to conclude the operations initiated before the decease or disability.

Requirements for customs brokers licensing

10-S. (1) Any person interested in obtaining the license of customs broker shall -

- (a) submit a customs broker license application, which shall include his tax identification number ;
- (b) pay applicable fees ;
- (c) be a citizen and resident of Anguilla for tax purposes and be at least X years old ;
- (d) have a high level of compliance record with the customs administration, the Tax Administration Service and financial institutions ;
- (d) hold a specialized degree in a customs related field ;
- (e) have more than X years' experience in customs matters ;
- (f) have financial solvency ;
- (g) not be a current government employee ;
- (h) not have a record of serious infringement or repeated infringements of this Act and the Regulations and fiscal legislation, including no record of serious criminal offenses ;
- (i) pass the Customs Broker License Examination ;

(2) The authorization shall be issued no later than X days after all necessary information and documents have been submitted. If the license is denied, the customs administration shall provide a full explanation of the facts and legal basis for the determination.

(3) The licenses for customs brokers shall be valid unless suspended, cancelled or terminated.

(4) The customs brokers may at any time apply for temporary suspension or termination of the license.

Obligations of customs brokers

10-T. (1) Once licensed, in order to be able to start operating, the customs broker shall submit -

- (a) a security in the form of a bond or other non-cash financial instrument ;
- (b) evidence of a high level of control of his operations and of the flow of goods, by means of a system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls ;
- (c) evidence of electronic transmission capability and interconnection with the customs automated system;
- (d) designate an employee as a contact point in case of absence, disability or decease of the customs broker.

(2) The customs broker shall –

- (a) maintain the eligibility conditions met at the time the license was issued and notify any change in those conditions ;
- (b) give notice of any occurrence arising after the grant of the status and which is likely to affect the maintenance of the status ;
- (c) register corporations set up to provide services as a customs broker, where applicable ;
- (c) act in his capacity as customs broker, in all the customs procedures or formalities in which he is involved and act under proper authorization from the declarant ;
- (d) verify the background of their clients and treat trader's information as confidential except under customs or judicial procedures or requirements ;
- (e) exercise due diligence in the activities and advice provided as a customs broker and with regards to accuracy and correctness of any information and documents submitted ;
- (f) maintain high professional standards, transparency, efficiency and ethics ;
- (g) maintain records on all the operations he performs, required by the customs administration for a specified period of time and make them available for inspection when requested, including the documents required to ensure powers granted by the declarants to the customs broker to act for and on his behalf ;
- (h) file reports when requested by the customs administration or required by the national legislation ;
- (j) accept the visits ordered by the customs administration to verify compliance with its obligations or for investigation purposes and provide all assistance required ;
- (k) cooperate with Customs and other government agencies in improving compliance ;
- (l) observe any restrictions related to conflict of interest ;
- (m) ensure compliance with customs laws and regulations and other applicable enactments in all the customs procedures or formalities in which he is involved as a customs broker ;

(3) The customs brokers may only act under the powers granted by the declarant through the power of attorney, [contract] and formal designation before the customs administration. The powers may be limited to a single operation, a specified period or until revoked by the declarant and notified to the customs administration in the terms and conditions set in the Regulations.

Requirements for authorization of in-house customs agent

10-U. (1) An in-house customs agent is a person appointed by a private corporation or a public entity to act on his name and on his behalf to submit the customs declaration and arrange for the customs clearance of goods, and authorized by the customs administration. The in-house customs agent may only act in this capacity on the name and on behalf of the corporation or entity making the appointment. The entity or corporation shall be responsible for the acts of the in-house customs agent.

(2) The private corporation shall –

- (a) submit an application for the authorization of in-house customs agent, which shall include the tax identification number of the corporation and of the person appointed ;
- (b) pay applicable fees ;

- (c) be legally incorporated or established in Anguilla ;
 - (d) have a high level of compliance record with the customs administration, the Tax Administration Service and financial institutions ;
 - (e) submit a security in the form of a bond or other non-cash financial instrument ;
 - (f) have a high level of control of his operations and of the flow of goods, by means of a system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls ;
 - (g) have financial solvency ;
 - (h) maintain electronic transmission capability and interconnection with the customs automated system ;
- (3) The person appointed to be authorized as in-house customs agent shall-
- (a) be employee, partner or officer of the corporation and hold a power of attorney to act in the name and on behalf of the corporation as in-house customs agent ;
 - (b) be a citizen and resident of Anguilla for tax purposes and be at least X years old ;
 - (c) have a high level of compliance record with the customs administration, the Tax Administration Service and financial institutions ;
 - (d) hold a specialized degree in a customs related field ;
 - (e) have more than X years' experience in customs matters ;
 - (f) not have a record of serious infringement or repeated infringements of this Act and the Regulations and fiscal legislation, including no record of serious criminal offenses ;
 - (g) pass the Customs Broker License Examination ;
- (4) The government entities may also apply for the authorization of an appointed in-house customs agent in accordance with the Regulations.
- (5) The authorization shall be issued no later than X days after all necessary information and documents have been submitted. If the authorization is denied, the customs administration shall provide a full explanation of the facts and legal basis for the determination.
- (6) The authorizations for in-house customs agents shall be valid unless suspended, cancelled or terminated.
- (7) The private corporation or government entities may at any time apply for temporary suspension or termination of the authorization of the appointed in-house customs agent.

Obligations of in-house customs agent

- 10-V. (1) The in-house customs agent shall-
- (a) maintain the eligibility conditions met at the time the authorization was issued and notify any change in those conditions ;
 - (b) give notice of any occurrence arising after the grant of the status and which is likely to affect the maintenance of the status ;
 - (c) act in his capacity as in-house customs agent under proper authorization from the declarant ;
 - (d) verify the background of their clients and treat trader's information as confidential except under customs or judicial procedures or requirements ;
 - (e) exercise due diligence in the activities and advice provided as an in-house customs agent and with regards to accuracy and correctness of any information and documents submitted ;
 - (f) maintain high professional standards, transparency, efficiency and ethics ;
 - (g) maintain records on all the operations he performs, required by the customs administration for a specified period of time and make them available for inspection when requested, including the documents required to ensure powers granted by the Private Corporation or Public entity to act for and on his behalf ;
 - (h) file reports when requested by the customs administration or required by the national legislation ;
 - (j) accept the visits ordered by the customs administration to verify compliance with its obligations or for investigation purposes and provide all assistance required ;

- (k) cooperate with Customs and other government agencies in improving compliance ;
- (l) observe any restrictions related to conflict of interest ;
- (m) ensure compliance with customs laws and regulations and other applicable enactments in all the customs procedures or formalities in which he is involved as in-house customs agent ;

Cancellation of the License of Customs Brokers and revocation of authorized in-house customs agents

10-W. (1) The customs administration shall monitor customs brokers in-house customs agents and may cancel the license or revoke the authorization, if at any time the customs broker, the private corporation or the in-house customs agent ceases to meet the criteria for the licensing or the authorization or for any other infringement that may be set out in the Regulations.

(2) Prior to issuing a determination to cancel the license or revoke the authorization, the customs administration shall provide the customs broker or the private corporation and the in-house customs agent, with a notice of intent to cancel the license or revoke the authorization in writing and a period of at least 10 days to respond. The final determination shall be in writing and shall include the legal basis for the determination and may be subject to the instances of review and appeal.

PART 3

CUSTOMS CONTROLLED AREAS

Appointment of customs ports and boarding stations

11. (1) The Governor in Council may **by regulation**—

- (a) appoint and name any area in Anguilla as a port for the purpose of customs;
- (b) alter the name or limits of any such port;
- (c) revoke the appointment of any such port; and
- (d) impose any condition or restriction on the use of an area in Anguilla as a port.

(2) The Comptroller may direct that any place in a port shall be a boarding station for the purpose of the boarding of or disembarkation from vessels by officers.

(3) Any person who contravenes or fails to comply with any condition or restriction imposed by the Governor in Council under subsection (1) is guilty of an offence and is liable to a fine of \$10,000.

Approved wharves

12. (1) The Comptroller may approve, for such periods and subject to such conditions and restrictions as he may see fit to impose, any place in Anguilla for the embarkation and disembarkation of passengers onto and from vessels and for the loading and the unloading of goods or any class or description of goods onto or from vessels, and any place so approved shall be referred to in this Act as an “approved wharf”.

(2) The Comptroller may at any time for reasonable cause revoke or vary the terms of any approval given under subsection (1).

(3) An officer may at any time enter an approved wharf and inspect it and any goods for the time being at the wharf.

(4) Any person who contravenes or fails to comply with any condition or restriction imposed by the Comptroller under subsection (1) is guilty of an offence and is liable to a fine of \$10,000.

Appointment of customs airports

13. (1) The Governor in Council may **by regulation**—

- (a) appoint and name any area in Anguilla as a customs airport;
- (b) alter the name or limits of any customs airport;
- (c) revoke the appointment of any customs airport; and
- (d) impose any condition or restriction on the use of any area in Anguilla as a customs airport.

- (2) Any person in control of any part of any customs airport shall—
- (a) permit an officer at any time to enter upon and inspect that airport and all buildings and goods on it; and
 - (b) if so required by the Comptroller—
 - (i) keep a record, in such form and manner and containing such particulars as the Comptroller may direct, of all aircraft arriving at or departing from that airport,
 - (ii) keep that record available and produce it on demand to any officer, together with all other documents kept at the airport that relate to the movement of aircraft, and
 - (iii) permit any officer to make copies of, take extracts from or remove for a reasonable period any such record or document.
- (3) Any person who contravenes or fails to comply with—
- (a) any condition or restriction imposed under subsection (1); or
 - (b) any requirement imposed under subsection (2);

is guilty of an offence and is liable to a fine of \$10,000.

Customs areas

14. (1) The Comptroller may approve, for such periods and subject to such conditions and restrictions as he may see fit to impose, any place in Anguilla, not being a customs port, approved wharf or customs airport, as a “customs area”.

(2) The Comptroller may at any time for reasonable cause, revoke or vary the terms of any approval given under subsection (1).

(3) Any person who contravenes or fails to comply with any condition or restriction imposed by the Comptroller under subsection (1) is guilty of an offence and is liable to a fine of \$10,000.

Examination station

15. (1) The Comptroller may approve, for such periods and subject to such conditions and restrictions as he thinks fit to impose, any place at a customs port, approved wharf, customs airport or other customs area for the loading and unloading of goods and the embarkation and disembarkation of passengers, and any such place so approved shall be referred to in this Act as an “examination station”.

(2) The Comptroller may at any time for reasonable cause revoke or vary the terms of any approval given under subsection (1).

(3) Any person who contravenes or fails to comply with any condition or restriction imposed by the Comptroller is guilty of an offence and is liable to a fine of \$10,000.

(4) Save as authorised by or under this Act or any other enactment, any person who, without the consent of the Comptroller, enters upon or remains upon any port, approved wharf, customs

airport, customs area or examination station is guilty of an offence and is liable to a fine of \$10,000 or to imprisonment for a term of 12 months or to both and may be arrested.

Transit sheds

16. (1) The Comptroller may approve for such periods and subject to such conditions and restrictions as he sees fit, places for the deposit of goods imported and not yet cleared from customs charge, including goods not yet reported and entered under this Act, and any place so approved is in this Act referred to as a "transit shed".

(2) An officer may at any time enter a transit shed and inspect it and any goods for the time being in the transit shed.

(3) If at any time after any goods have been placed in a transit shed and before they are lawfully removed therefrom, any goods are found to be missing or deficient, and it is not shown to the Comptroller that their absence or deficiency can be accounted for by natural waste or other legitimate cause, then, without prejudice to any fine or forfeiture incurred under any other provision of this Act, the Comptroller may require the transit shed keeper to pay immediately in respect of the missing goods or of the whole or any part of the deficiency, as he sees fit, the duty on such goods.

(4) The Comptroller may at any time for reasonable cause revoke or vary the terms of any approval given under subsection (1).

(5) Any person who contravenes or fails to comply with any condition or restriction imposed by the Comptroller under subsection (1) is guilty of an offence and is liable to a fine of \$10,000.

Agents

17. (1) Subject to section 23(2), the master of any vessel or the commander of any aircraft may appoint as his agent any person duly authorised to perform any act required by any customs enactment to be performed by a master or a commander, and, if he does so, he shall in writing notify the Comptroller of the name and address of that person and if the Comptroller is satisfied that the person appointed is a fit and proper person to be such an agent, the Comptroller may, subject to such terms and conditions as he sees fit to impose, accept that person as the agent of that vessel or aircraft, but, if no such agent is appointed, the owner of the vessel or aircraft, if a resident or represented in Anguilla, is deemed to be the agent of the master or commander for all purposes of any assigned matter.

(2) If any agent appointed under subsection (1) wilfully or persistently neglects or refuses to comply with any requirement imposed by any customs enactment on a master of a vessel or a commander of an aircraft, the Comptroller may, by notice in writing, advise any master of that vessel or any commander of that aircraft that he no longer accepts the person appointed as the agent of that vessel or that aircraft, and that person shall upon such notification then cease to be the agent of the master of that vessel or the commander of that aircraft.

(3) Where any person, other than the master of a vessel or the commander of an aircraft, is required by any customs enactment to perform any act or duty, he may appoint as his agent any other person to perform that act or duty.

(4) Before accepting any request by an agent to act on behalf of a person in relation to an assigned matter, an officer may require that agent to produce to him written authority from the person whose agent he is, certifying that he is so authorised to act.

(5) The Comptroller may, if he sees fit, require any person appointed to act as an agent under subsection (1) to give security by bond or otherwise in such form and manner as the Comptroller may direct and such bond—

- (a) shall be taken on behalf of the Government of Anguilla;
- (b) shall be valid notwithstanding that it is entered into by a person under full age; and
- (c) may be cancelled at any time by, or by the order of, the Comptroller.

Control of pleasure craft

18. (1) **The Governor in Council may make regulations with regard to the arrival, report and departure of pleasure craft.**

(2) **In this section, “pleasure craft” means—**

- (a) any vessel that, at the time of its arrival at a place in Anguilla from abroad, is being used for private recreational purposes only; or
- (b) any vessel that the proper officer, after written application is made to Customs, permits to be treated as a pleasure craft.

(Act 15/2010, s. 3)

(3) Regulations under subsection (1) may allow the Comptroller to give such directions as he thinks fit and may provide for the imposition of a fine of \$10,000 for any contravention of, or failure to comply with, any such regulation or any direction given under any such regulation and for the forfeiture of any vessel or goods involved in any such offence.

ADVANCE PASSENGER AND ADVANCE CARGO INFORMATION

Advance Passenger and Advance Cargo Information

18-A. (1) The master or commander of a conveyance that is expected to arrive in Anguilla whether the conveyance is laden or unladen, shall prior to the arrival of the conveyance, and within the time period prescribed in the Regulations provide the customs administration the advance passenger and advance cargo information prescribed in the Regulations in electronic form.

(2) The master or commander of a conveyance that is expected to depart from Anguilla, shall prior to departure and in accordance with the Regulations, provide the customs administration the advance passenger and advance cargo information in electronic form.

(3) Advance passenger and advance cargo information may be shared with other government agencies to conduct pre-arrival screening of persons and cargo in accordance with Memoranda of Understanding.

PART 4

~~IMPORTATION~~

ARRIVAL REPORTING

Obligations relating to arrival of vessel or aircraft

18-B. (1) The master of a vessel or the commander of an aircraft arriving in Anguilla shall comply with any direction given by the customs officer in respect of any goods, crew or passengers carried in the conveyance, including-

- (a) to proceed directly to a customs port or airport;
- (b) to anchor or land at the place designated for that purpose, or as directed by the customs officers ;
- (c) to submit a report of arrival when the conveyance arrives carrying passengers or goods that have not been cleared for importation ;
- (d) to stop the conveyance for boarding until the customs officer directs that the conveyance may proceed and facilitate the boarding of the conveyance by the customs officer.
- (e) to answer any questions by the customs officer and produce any books and documents requested.
- (f) to cause the conveyance to leave Anguilla immediately or within such time as the customs officer directs, if so directed by the customs officer.

(2) When the conveyance anchors or lands at a place other than a designated place, in compliance with any statutory or other requirement relating to navigation, compelled by accident, whether or other necessity or when authorized by the customs authorities, the master, commander or agent -

- (a) shall immediately report the arrival of the conveyance to a customs officer or to a police officer;
- (b) shall not, without the consent of the customs officer permit any goods carried in the conveyance to be unloaded from it
- (c) shall not allow any of the crew or passengers to disembark from or board the conveyance unless authorized to do so by the customs officer.

Procedure on arrival of vessels

19. (1) Subject to this section and save as the Comptroller may otherwise permit—

- (a) the master of any vessel arriving in the territorial sea of Anguilla from a place outside of Anguilla shall cause that vessel to proceed directly to a customs port; and
- (b) no person importing or concerned in importing any goods into Anguilla in any vessel shall bring those goods into Anguilla at any place other than a port;

and any master or other person who contravenes or fails to comply with this subsection is guilty of an offence and is liable to a fine of \$10,000, or 3 times the value of the goods, whichever is greater, and any goods imported in contravention of this subsection shall be liable to forfeiture.

(2) Subsection (1) shall not apply in relation to any vessel that is compelled by accident, stress of weather or other unavoidable cause to arrive at a place other than a customs port, but, subject to subsection (3)—

- (a) the master of any such vessel—
 - (i) shall immediately report the arrival to an officer,
 - (ii) shall not without the consent of an officer permit any goods carried on the vessel to be unloaded therefrom, or any passenger or member of the crew to depart from the vicinity of the vessel, and
 - (iii) shall comply with any direction given by an officer in respect of such goods; and
- (b) no passenger or member of the crew shall, without the consent of an officer, leave the immediate vicinity of any such vessel;

and any master or any other person who contravenes or fails to comply with this subsection is guilty of an offence and is liable to a fine of \$20,000 or to imprisonment for a term of 2 years or to both and may be arrested.

- (3) Nothing in subsection (2) prohibits—
 - (a) the departure of any passenger or member of the crew from the vicinity of a vessel; or
 - (b) the removal of goods from a vessel;

where that departure or removal is necessary for reasons of health, safety or the preservation of life or property.

Procedure on arrival of aircraft

- 20.** (1) Subject to this section, and save as the Comptroller may otherwise permit—
- (a) the commander of any aircraft arriving in Anguilla from a place outside of Anguilla shall not cause or permit that aircraft to land—
 - (i) for the first time on its arrival in Anguilla, or
 - (ii) at any time while it is carrying passengers or goods brought in that aircraft from a place outside Anguilla and not yet cleared, at any place other than a customs airport; and
 - (b) no person importing or concerned in importing any goods in any aircraft shall bring those goods into Anguilla at any place other than a customs airport;

and any commander or other person who contravenes or fails to comply with this subsection is guilty of an offence and is liable to a fine of \$10,000 or 3 times the value of the goods whichever is the greater and any goods imported in contravention of this subsection shall be liable to forfeiture.

(2) Subsection (1) shall not apply in relation to any aircraft which is required by or under any enactment relating to air navigation, or is compelled by accident, stress of weather or other unavoidable cause, to land at a place other than a customs airport, but subject to subsection (3)—

- (a) the commander of any such aircraft—

- (i) shall immediately report the landing to an officer and shall on demand produce to him the journey log belonging to the aircraft,
 - (ii) shall not without the consent of an officer permit any goods carried on the aircraft to be unloaded from, or any passenger or member of the crew to depart from the vicinity of, the aircraft, and
 - (iii) shall comply with any direction given by an officer with respect to such goods; and
- (b) no passenger or member of the crew shall without the consent of an officer leave the immediate vicinity of any such aircraft;

and any commander or any other person who contravenes or fails to comply with this subsection is guilty of an offence and is liable to a fine of \$20,000 or to imprisonment for a term of 2 years or to both and may be arrested.

(3) Nothing in subsection (2) prohibits—

- (a) the departure of any passenger or member of the crew from the vicinity of an aircraft; or
- (b) the removal of goods from an aircraft;

where that departure or removal is necessary for reasons of health, safety or the preservation of life or property.

Power to make regulations as to arriving vessels and aircraft and the unloading of imported goods

21. (1) The Governor in Council may make regulations—

- (a) prescribing the procedure to be followed by a vessel arriving at a customs port and an aircraft arriving at a customs airport;
- (b) regulating the unloading, landing, movement and removal of goods on their importation; and
- (c) permitting the Comptroller to give directions and prescribe forms;

and different regulations may be made with respect to vessels and aircraft.

(2) Without prejudice to the generality of subsection (1), regulations made under that subsection may provide for the imposition of a fine of \$10,000 for any contravention of or failure to comply with any such regulation, or any direction given under any such regulation, and for the forfeiture of any goods involved in any such offence.

Notification of arrival of vessels

22. Save as the Comptroller may otherwise permit, the master of every vessel intended to come to Anguilla shall notify the Comptroller of the expected arrival of that vessel not less than one working

day before the arrival of that vessel and any failure to so notify shall make the master guilty of an offence and liable to a fine of \$1,000.

Report inwards

23. (1) The master of every vessel exceeding 100 net tonnes arriving at a customs port—

- (a) from any place outside of Anguilla; or
- (b) carrying goods brought in that vessel from a place outside of Anguilla and not yet cleared on importation;

shall, within 24 hours before arrival, deliver to the Comptroller a report in such form and manner and containing such particulars as the Comptroller may direct.

(Act 15/2010, s. 4)

(2) Notwithstanding section 17(1), the master of every vessel not exceeding 100 net tonnes arriving at a port—

- (a) from any place outside of Anguilla; or
- (b) carrying goods brought in that vessel from a place outside of Anguilla and not yet cleared on importation;

shall, within 24 hours of arrival, deliver to Customs a report in such form and manner and containing such particulars as the Comptroller may direct and shall sign such forms as directed by the Comptroller.

(Act 15/2010, s. 4)

(3) The commander of every aircraft arriving at a customs airport—

- (a) from any place outside of Anguilla; or
- (b) carrying goods or passengers taken on board that aircraft at a place outside of Anguilla, being goods or passengers either—
 - (i) bound for a destination in Anguilla and not yet cleared at a customs airport, or
 - (ii) bound for a destination outside Anguilla;

shall, upon arrival, deliver to the Comptroller a report in such form and manner and containing such particulars as the Comptroller may direct.

(4) In respect of vessels exceeding 100 net tonnes, where any report made under this section is incorrect, the person who made it shall, within 12 hours of the making of it, or such longer period as the Comptroller may in any case permit, be allowed to amend it and, if the Comptroller is satisfied that the error was not made knowingly or recklessly, then, notwithstanding any other customs enactment, that person is not guilty of any offence and, where the error consisted of the omission or incorrect reporting of any goods, those goods are not liable to forfeiture.

(5) In respect of aircraft, where any report made under this section is incorrect, the person who made it shall within 6 hours of the making of it, or such longer period as the Comptroller may in any case permit, be allowed to amend it and, if the Comptroller is satisfied that the error was not made knowingly or recklessly, then, notwithstanding any other customs enactment, that person is not guilty of any offence and where the error consisted of the omission or incorrect reporting of any goods, those goods are not liable to forfeiture.

(6) Where—

- (a) a person by whom a report is required to be made by this section fails to make a report as required, he is guilty of an offence and is liable to a fine of \$10,000; and
- (b) any goods which appear on any clearance required to be produced by this section do not appear on the report, then, unless the report is amended under subsection (4) or (5), the master or commander—
 - (i) shall pay to the Comptroller the duty on such goods, and
 - (ii) is guilty of an offence and is liable to a fine of \$10,000 or 3 times the value of the goods, whichever is the greater.

(7) Any person making a report under this section shall, at the time of making it, or at any time thereafter—

- (a) answer all such questions relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as may be put to him by the proper officer; and
- (b) produce all books and documents in his custody or control relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as the proper officer may require;

and any failure to do so shall make that person guilty of an offence and liable to a fine of \$10,000.

(8) If, without the consent of the Comptroller previously obtained, at any time after a conveyance vessel or aircraft carrying goods brought in that vessel or aircraft from a place outside of Anguilla arrives within the territorial sea of Anguilla or lands and, before a report has been made in accordance with this section—

- (a) bulk is broken;
- (b) goods are unloaded from or taken on board that vessel or aircraft;
- (c) any alteration is made in the stowage of any goods carried; or
- (d) any goods are staved, destroyed or thrown overboard, or any container is opened;

then, unless the matter is explained to the satisfaction of the Comptroller, the master or commander is guilty of an offence and is liable to a fine of \$10,000 or 3 times the value of the goods, whichever is greater, and any goods in respect of which the offence was committed are liable to forfeiture.

(9) The Comptroller may require any goods reported as stores on board any vessel or aircraft, or any portion of them, to be entered for warehousing under section 24 and for the purposes of this subsection the master or commander shall be deemed to be the importer of those goods.

CUSTOMS CLEARANCE PROCESS

Person submitting a customs declaration

23-A. (1) The customs declaration shall be submitted by the declarant, or by a licensed customs broker [or an authorized in-house customs agent] appointed by the declarant, to act on his name and on his behalf to submit the customs declaration and arrange for the customs clearance of goods, in accordance with the Regulations.

(2) The customs broker as well as the authorized in-house customs agent is the legal representative of the declarant for the purposes of the actions and notifications of the customs clearance and the acts derived therefrom. The declaration of goods filed or transmitted electronically by a customs broker or by an authorized in-house customs agent shall be presumed to have been made with the consent of the declarant.

(3) The declarant shall be responsible for the accuracy of the particulars provided in the customs declaration and for the payment of the duties and taxes.

(4) The customs broker shall be jointly and severally liable, together with the declarant, for the payment of duties, taxes, fees, charges, interests and fines owed, in connection to the customs operations where he acts in this character.

(5) The declarant is the holder or the person who has free disposal of the goods and is the person who makes the customs declaration or in whose name the customs declaration is made.

Submission of customs declaration

23-B. (1) Except as otherwise provided in the Regulations, all imported or exported goods shall be the subject of a customs declaration assigning the goods to a customs procedure -

(a) for warehousing, if so eligible;

(b) for home use, if so eligible;

(c) or transit or transshipment; or

(d) for temporary importation with a view to subsequent re-exportation.

(2) An exemption from duties and taxes shall not waive the obligation provided for in subsection (1).

(3) A person who submits a customs declaration may inspect the goods and draw samples from the goods, in accordance with the conditions specified in the Regulations.

(4) The customs declarations and supporting documents shall be submitted electronically and the customs declaration shall contain the tax identification number of the importer or exporter and the authorization or licensing number of the customs agent or customs broker.

(5) The Regulations may provide for oral, simplified or provisional customs declarations.

(6) The processing of a customs declaration prior to the importation of the goods into Anguilla shall be subject to terms

and conditions set in the Regulations and other enactments.

(7) The Regulations shall allow for the electronic payment of customs duties, taxes, fees or charges imposed on or in connection with the importation or exportation of goods and collected by customs and other related agencies.

~~(8) Except as otherwise provided, the date of submission of the customs declaration by the customs authorities shall be the date to be used for the application of the provisions governing the customs procedure for which the goods are declared and for all other import or export formalities.~~

Acceptance of a customs declaration

23-C. The customs declarations which comply with the conditions laid down in this Act and the Regulations, shall be accepted by the electronic system, provided that the goods to which they refer have been presented to customs, or that at the discretion of the customs authorities, the goods be made available for purposes of customs control.

Amendment of a customs declaration

23-D. (1) A declarant shall be allowed, upon his request, to amend one or more statements in the declaration after it has been accepted.

(2) An amendment request shall not be granted after customs authorities:

- (a) have informed the declarant of their intent to conduct examination of goods;
- (b) have identified inaccuracies in the declared particulars, or
- (c) have released the goods.

(3) Upon the declarant's request and for reasons deemed valid, the customs administration may, under conditions determined by the Regulations, authorize the amendment of the goods declaration after verification of the declaration has begun. However, customs may take the necessary measures, including the application of a penalty, if an offense is discovered during the verification of the goods declaration or examination of the goods.

(4) The amendment shall not cause the goods declaration to apply to goods other than those initially declared.

Simplified procedures

23-E. (1) The Regulations shall provide the terms and conditions for simplified entry procedures to expedite clearance of goods while maintaining appropriate customs controls. Subject to authorization and in accordance with the Regulations, these procedures may:

- (a) provide for information required to release an express shipment to be submitted and processed before the shipment arrives;
- (b) allow a single electronic submission of information, such as a simplified or provisional customs declaration, covering all goods contained in a shipment, subject to completion within a specified period;
- (c) expedite the release of these shipments based on, to the extent possible, minimum documentation or a single submission of information;
- (d) provide for these shipments, under normal circumstances, to be released immediately after arrival, provided that all required documentation and data are submitted;

- (e) provide for the inspection and clearance outside the designated hours of business or a way from customs offices.
- (2) Simplified procedures referred to in subsection (1) may apply to relief consignments as defined in the Regulations.

Verification of a customs declaration

23-F. The customs administration may, for the purpose of verifying the accuracy of the particulars contained in a customs declaration which has been accepted:

- (a) examine the declaration and the supporting documents;
- (b) require the declarant or the customs agent or authorized representative to provide other documents;
- (c) examine the goods;
- (d) take samples for analysis or for detailed examination of the goods.

Examination and sampling of goods

23-G. (1) Except as otherwise provided in the Regulations, the customs administration shall apply an automated selectivity control, using the Customs Automated System or other system, based on risk management, to determine goods that shall be subject to examination.

(2) The customs administration shall conduct the examination of goods as soon as possible, in designated places within customs controlled areas or outside the customs premises and examinations may take place outside the official opening hours of the customs offices, in accordance with the Regulations.

(3) The customs administration may use technological equipment or systems, such as non-intrusive inspection equipment, digital weights, plate readers, to facilitate inspection and clearance of goods.

(4) With a view to facilitating trade through the promotion of efficient and effective processing of imports and exports through their ports of entry, the customs administration and other agencies that examine goods, conveyances or instruments of international traffic, shall carry out examinations with appropriate coordination and, to the extent practicable, simultaneously within a single location, with a view to releasing goods in a timely manner and immediately after the examinations have been completed, provided that all regulatory requirements have been met.

(5) When goods are examined, priority shall be given to live animals, perishable goods and other goods that the customs administration considers as urgently required.

(6) The declarant shall have the right to be present or to be represented at the examination of the goods or the taking of samples and may be required to provide any assistant that may be necessary to facilitate the examination or sampling of goods. If the declarant fails to comply with the injunctions of the customs administration, the customs officers shall examine the goods on their own.

IMPORTATION

Entry of goods on importation

24. (1) The importer of any goods, other than goods which are exempt from the requirements of this section, shall within 7 days of their importation, deliver to Customs an entry of those goods in such form and manner and containing such particulars as the Comptroller may direct.

(Act 15/2010, s. 5)

(2) The Comptroller may, if he thinks fit—

- (a) exempt any goods from the requirements of this section, subject to such conditions as he sees fit to impose; or
- (b) authorise the destruction of any perishable goods.

(3) Passengers' accompanied baggage is exempt from the requirements of this section.

(4) Subject to subsection (5), goods may be entered under subsection (1)—

- (a) for warehousing, if so eligible;
- (b) for home use, if so eligible;
- (c) for transit or transshipment; or
- (d) in such cases as the Comptroller may permit, for temporary importation with a view to subsequent re-exportation.

(5) The Comptroller may refuse to accept any entry of goods if he is not satisfied that those goods were imported at the time of the delivery of the entry.

(6) Where, in the case of any goods that are not chargeable with any duty, any entry made under subsection (1) is incorrect, the importer shall, within 10 days after the delivery of the entry or such longer period as the Comptroller may in any case permit, be allowed to deliver to the Comptroller a full and accurate account of the goods and, if the Comptroller is satisfied that the error was not made knowingly or recklessly, then, notwithstanding any other provision of any customs enactment, the person making the entry is not guilty of any offence and the goods which were the subject of the error are not liable to forfeiture.

(7) The Comptroller may, notwithstanding that no entry has been made under subsection (1), permit the delivery to an importer of any bullion, currency notes or coins imported into Anguilla.

Entry by bill of sight

25. (1) Without prejudice to section 24, where on the importation of any goods the importer is unable for want of any document or information to make perfect entry of those goods, he shall make a signed declaration to Customs in such form and manner and containing such particulars as the Comptroller may direct.

(Act 15/2010, s. 6(a))

(2) Where a declaration under subsection (1) is made, the proper officer shall permit the importer to examine the goods imported in his presence.

(Act 15/2010, s. 6(b))

(3) Where an importer has made a declaration under subsection (1), and submits to Customs an entry, not being a perfect entry, in such form and manner and containing such particulars as the Comptroller may direct, and the proper officer is satisfied that the description of the goods for tariff and statistical purposes is correct, and in the case of goods liable to duty according to number, weight, measurement or strength, such number, weight, measurement or strength is correct, the proper officer shall, on payment to him of the specified sum, accept that entry as an entry by bill of sight and allow the goods to be delivered for home use.

(Act 15/2010, s. 6(c))

(4) For the purposes of subsection (3), the specified sum shall be an amount estimated by the proper officer to be the duty payable on such goods.

(5) Within 3 months from the date of making an entry by bill of sight under subsection (3), or such longer time as the Comptroller may in any case permit, the importer shall make a perfect entry, and if that perfect entry shall show the amount of duty—

- (a) to be less than the specified sum, the Comptroller shall authorise payment of the difference to the importer; or
- (b) to be more than the specified sum, the importer shall pay the difference to the Comptroller.

(6) Where no perfect entry is made within the time limit laid down by subsection (5), the specified sum paid shall be deemed to be the amount of duty payable on the importation of the goods.

(7) Notwithstanding any other provision of this section, where at any time after the importation of goods the Comptroller is satisfied that in respect of such goods it is impossible for the importer to make perfect entry in respect of those goods, the Comptroller may, subject to such conditions and restrictions as he may see fit to impose, permit the goods to be entered at a value which, in his opinion the correct value of the goods, and such entry shall be deemed to be perfect entry, but where any condition or restriction imposed under this subsection is contravened or not complied with, the goods shall become liable to forfeiture.

Failure to comply with provisions as to entry

26. Without prejudice to any liability under any other provision of this Act, any person making entry of goods on their importation who fails to comply with any of the requirements of this Part in connection with that entry is liable to a fine of \$5,000 and the goods are liable to forfeiture.

Removal of uncleared goods to a customs warehouse

27. (1) Where in the case of any imported goods for which an entry is required—

- (a) entry has not been made by the expiration of the relevant period;

- (b) at the expiration of 21 clear days from the relevant date, entry having been made of the goods, they have not been unloaded from the importing vessel or aircraft, or in the case of goods that have been unloaded, they have not been produced for examination and clearance; or
- (c) the goods are contained in a small package or consignment;

then at any time after the relevant period or date the proper officer may cause the goods to be deposited in a customs warehouse.

(2) In this section—

- (a) “relevant period” means a period of 7 days from the relevant date; and

(Act 15/2010, s. 7(a))

- (b) “relevant date” means the date when—

- (i) a report of the importing vessel or aircraft was delivered under section 23,
- (ii) entry of the goods was delivered under section 24, or
- (iii) where no such report or entry was delivered, the latest date when it could properly have been delivered.

(Act 15/2010, s. 7(b))

(3) Where any restriction is placed upon the unloading of goods from any vessel or aircraft by virtue of any enactment relating to the prevention of epidemic or infectious diseases then, in relation to those goods, the “relevant date” means the date of the removal of the restriction.

Control of movement of uncleared goods within or between port or airport and other places

28. (1) The Governor in Council may make regulations as to the manner in which, and the conditions under which, goods to which this section applies, or any class or description of such goods, may be moved within the limits of any port or customs airport or between any port or customs airport and any other place and may permit the Comptroller to give directions.

(2) This section applies to goods chargeable with any duty that has not been paid, to drawback goods and to any other goods that have not been cleared out of charge.

(3) Any regulations under subsection (1) as to the manner in which and the conditions under which goods may be moved within the limits of any port or customs airport or between any port or customs airport and any other place may require that any goods to which this section applies shall be moved only—

- (a) by persons licensed by the Comptroller for that purpose; or
- (b) in such vessels, aircraft or vehicles or by such other means as may be approved by the Comptroller for that purpose;

and any such license or approval may be granted for such period and subject to such conditions and restrictions as the Comptroller thinks fit and may be revoked at any time by the Comptroller.

(4) Any person who contravenes or fails to comply with any regulation made under subsection (1) or any condition or restriction imposed, or the terms of any licence granted by the Comptroller under this section, is guilty of an offence and is liable to a fine of \$10,000.

Control of movement of goods inland

- 29.** (1) The Comptroller may by direction impose conditions and restrictions as respects—
- (a) the movement of imported goods between the place of importation and a place approved by the Comptroller for the clearance out of charge of such goods or the place of exportation of such goods; and
 - (b) the movement of goods intended for export between a place approved by the Comptroller for the examination of such goods or a place designated by the proper officer and the place of exportation.
- (2) Directions under subsection (1) may in particular—
- (a) require the goods to be moved within such period and by such route as may be specified by or under the regulations;
 - (b) require the goods to be carried in a vehicle or container complying with such requirements and secured in such manner as may be so specified; or
 - (c) prohibit, except in such circumstances as may be so specified, any unloading or loading of the vehicle or container or any interference with its security.
- (3) Any documents required to be made or produced as a result of directions made under subsection (1) shall be made or produced in such form and manner and contain such particulars as the Comptroller may direct, but the Comptroller may relax any requirement that any specific document be made or produced and, if he does so, may impose substituted requirements.
- (4) Any person who contravenes or fails to comply with any direction made under subsection (1) or any requirement by or under any such direction, that person and the person then in charge of the goods are each guilty of an offence and are liable to a fine of \$10,000 and any goods in respect of which the offence was committed are liable to forfeiture.

Goods improperly imported

- 30.** (1) Without prejudice to any other customs enactment, where—
- (a) except as expressly provided by such an enactment, any imported goods, being goods chargeable on their importation with any duty, are, without payment of that duty—
 - (i) unloaded at any port,
 - (ii) unloaded from any aircraft, or
 - (iii) removed from their place of importation or from any approved wharf, examination station, transit shed or other customs area;

- (b) any goods are imported, landed or unloaded contrary to any prohibition or restriction for the time being in force with respect to them under or by virtue of any enactment;
- (c) any goods, being goods chargeable with any duty or goods the importation of which is for the time being prohibited or restricted by or under any enactment, are found, whether before or after the unloading thereof, to have been concealed in any manner on board any vessel or aircraft;
- (d) any goods are imported concealed in a container holding goods of a different description;
- (e) any imported goods are found, whether before or after delivery, not to correspond with any entry made in respect of them; or
- (f) any imported goods are concealed or packed in any manner appearing to be intended to deceive an officer;

these goods are, subject to subsection (2), liable to forfeiture.

(2) Where any goods, the importation of which is for the time being prohibited or restricted under or by virtue of any enactment, are on their importation either—

- (a) reported as intended for exportation in the same vessel or aircraft;
- (b) entered for transit or transshipment; or
- (c) entered to be warehoused for exportation or for use as stores;

the Comptroller may, if he sees fit, permit those goods to be dealt with accordingly.

(3) If any person—

- (a) imports or causes to be imported any goods—
 - (i) concealed in a container holding goods of a different description, or
 - (ii) packed in a manner appearing to be intended to deceive an officer; or
- (b) directly or indirectly imports or causes to be imported or entered any goods found, whether before or after delivery, not to correspond with any entry made in respect of them;

he is guilty of an offence and is liable to a fine of \$20,000 or 3 times the value of the goods, whichever is the greater, or to a term of imprisonment of 2 years or to both and may be arrested.

Offences in relation to importation

31. (1) If any person unships or lands in any port or unloads from any aircraft in Anguilla or removes from their place of importation or from any approved wharf, examination station, transit shed or customs area—

- (a) any goods chargeable with a duty that has not been paid; or

- (b) any goods imported, landed or unloaded contrary to any prohibition or restriction for the time being in force under or by virtue of any enactment with respect to those goods;

or assists or is otherwise concerned in such unshipping, landing, unloading or removal, or if any person imports or is concerned in importing any goods contrary to any such prohibition or restriction whether or not the goods are unloaded then, if he does so with intent to defraud the Government of Anguilla of any such duty or to evade any such prohibition or restriction, he is guilty of an offence and, subject to subsection (2), is liable to a fine of \$10,000 or 3 times the value of the goods, whichever is the greater, or to imprisonment for a term of 1 year or to both and may be arrested, and the goods are liable to forfeiture.

(2) Where the goods in respect of which the offences specified in subsection (1) were committed are controlled drugs as defined in the Drugs (Prevention of Misuse) Act, a person guilty of an offence under this section is liable—

- (a) on summary conviction to a fine of \$250,000 or to imprisonment for 5 years or to both; or
- (b) on indictment to a fine of \$500,000 or to imprisonment for 20 years or to both;

and the goods are liable to forfeiture.

~~PART 5~~

~~IMPORTATION AND EXPORTATION BY POST~~

~~Importation and exportation of goods by post~~

~~32.—(1) Without prejudice to any other provision of this Act—~~

- ~~(a) all letters arriving in Anguilla from abroad shall be produced to the proper officer and, if in his opinion any such letter could contain other than written or printed material, he may require it to be opened in the presence of the Postmaster or any person authorised by him and, if any such letter is found to contain dutiable, restricted or prohibited goods, such goods are liable to forfeiture;~~
- ~~(b) all postal packages arriving in Anguilla from abroad shall be accompanied by a customs declaration and shall be produced to the proper officer, who may require them to be opened in the presence of the Postmaster or any person authorised by him, and where any goods contained in such package—~~
- ~~(i) do not correspond with any declaration of contents made in respect of them, or~~
- ~~(ii) are not accompanied by a customs declaration,~~
- ~~those goods are liable to forfeiture; and~~
- ~~(c) no goods imported into Anguilla by post shall be allowed to be removed from the control of the Postmaster until all duty chargeable on them has been paid.~~

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~~(2) Without prejudice to any other provision of this Act —~~

~~(a) all letters posted in Anguilla for transmission abroad shall be produced to the proper officer and, if in his opinion any such letter could contain other than written or printed material, he may require it to be opened in the presence of the Postmaster or any person authorised by him and, if any such letter is found to contain restricted or prohibited goods, such goods shall be liable to forfeiture;~~

~~(b) all postal packages posted in Anguilla for transmission abroad shall be accompanied by a customs declaration and shall be produced to the proper officer, who may require them to be opened in the presence of the Postmaster or any person authorised by him, and where any goods contained in such package —~~

~~(i) do not correspond with any declaration of contents made in respect of them, or~~

~~(ii) are not accompanied by a customs declaration;~~

~~those goods are liable to forfeiture.~~

~~(3) Without prejudice to subsection (1) or (2), any person who —~~

~~(a) claims a letter or postal package arriving in Anguilla; or~~

~~(b) posts a letter or postal package in Anguilla for transmission abroad;~~

~~which contains currency, cheques or monetary instruments, or any combination thereof, of or exceeding \$27,000, or the equivalent in any currency or combination of currencies, shall declare and make a report of same in such form and manner and containing such particulars as the Comptroller may direct.~~

~~(Act 15/2010, s. 8)~~

~~(4) Any person failing to declare and make a report as required under subsection (3) is guilty of an offence and is liable to a fine of \$10,000 or 3 times the value of the currency, cheques or monetary instruments not declared or reported, whichever is greater.~~

~~(Act 15/2010, s. 8)~~

~~(5) Without prejudice to any other provision of this Act, the Governor in Council may make regulations prescribing the procedure on the importation and exportation of postal packets and may exempt such importation or exportation from such requirements of such sections of the Act as he thinks fit.~~

PART 6

EXPORTATION

Power to make regulations as to the loading of goods and departing vessels and aircraft

33. (1) The Governor in Council may make regulations—

- (a) regulating the storage, putting alongside, making waterborne and loading of, goods intended for export or for use as stores;
- (b) prescribing the procedure to be followed by vessels intending to leave ports and aircraft intending to leave customs airports; and
- (c) permitting the Comptroller to give directions;

and different regulations may be made with respect to vessels and aircraft.

(2) Without prejudice to the generality of subsection (1), regulations made under that subsection may provide for the imposition of a fine of an amount of \$10,000 for any contravention of or failure to comply with any such regulation, or any direction given under any such regulation, and for the forfeiture of any goods involved in any such offence.

Entry of goods for exportation

34. (1) Subject to subsection (2), the exporter of any goods, other than passengers' accompanied baggage, shall deliver to Customs an entry of those goods in such form and manner and containing such particulars as the Comptroller may direct.

(Act 15/2010, s. 9)

(2) The Comptroller may relax, subject to such conditions and restrictions as he may see fit, all or any of the requirements imposed under subsection (1) in relation to any goods, class or description of goods.

(3) Where, in the case of any goods that are not chargeable with any duty, any entry made under subsection (1) is incorrect, the exporter shall, within 10 days after the delivery of the entry or such longer period as the Comptroller may in any case permit, be allowed to deliver to the Comptroller a full and accurate account of the goods and, if the Comptroller is satisfied that the error was not made knowingly or recklessly, then, notwithstanding any other customs enactment, the person making the entry is not guilty of any offence and the goods which were the subject of the error are not liable to forfeiture.

(4) Where any goods that have been entered for exportation or for use as stores are not duly loaded onto the vessel or aircraft for which they are entered, then, unless within 24 hours of the departure of that vessel or aircraft the person who entered them notifies Customs of that short loading, those goods are liable to forfeiture.

(Act 15/2010, s. 9)

(5) If any goods for which entry is required under subsection (1) are put on board any vessel or aircraft for exportation or for use as stores or are waterborne for such purpose before entry in respect of them has been made, those goods are liable to forfeiture and, where the placing on board or making waterborne was done with fraudulent intent, any person concerned in that act with knowledge of that intent is guilty of an offence and is liable to a fine of \$20,000 or 3 times the value of the goods, whichever is the greater, or to a term of imprisonment of 2 years or to both and may be arrested.

DEPARTURE REPORTING

Obligations relating to departure of vessel or aircraft

34-A. (1) The master of a vessel or the commander of an aircraft that is expected to leave from Anguilla shall

comply with any direction given by the customs officer in respect of any goods, crew or passengers carried in the conveyance, including—

(a) submit an outward report with supporting documents, in such a form and within such a time as may be prescribed ;

(b) submit an account of the cargo and stores taken on or remaining on board the vessel or aircrafts in Anguilla ;

(c) produce all books and documents as may be required by the customs authorities ;

(d) deliver a content on clearance outwards at the intended port of departure in Anguilla in an electronic form, prior to the departure of the vessel or aircraft from Anguilla.

(e) Provide a list of the crew and each passenger on board before the time of departure.

(2) No vessel or aircraft shall depart, until the customs officer has issued a certificate of clearance in the prescribed form and the clearance shall be the authority for the departure of the vessel or aircraft

Entry outwards of vessels and aircraft

35. (1) Save as the Comptroller may otherwise permit—

- (a) the master of any vessel not exceeding 100 net tonnes shall, before departure of that vessel, deliver to Customs an entry outwards, in such form and manner and containing such particulars as the Comptroller may direct, and shall sign such entry in the presence of the proper officer;
- (b) the master of any vessel exceeding 100 net tonnes shall, before departure of that vessel, deliver to Customs an entry outwards of that vessel in such form and manner and containing such particulars as the Comptroller may direct; and
- (c) the commander of any aircraft shall, before departure of that aircraft, deliver to Customs an entry outwards of that aircraft in such form and manner and containing such particulars as the Comptroller may direct.

(Act 15/2010, s. 10)

(2) Where any entry made under paragraph (1)(a) or (b) is incorrect, the person who made it shall, within 24 hours of the making of it or such longer period as the Comptroller may in any case permit, be allowed to amend it, and if the Comptroller is satisfied that the error was not made knowingly or recklessly, then, notwithstanding any other customs enactment, that person is not guilty of an offence and any goods that were the subject of the error are not liable to forfeiture.

(3) Where any entry made under paragraph (1)(c) is incorrect, the person who made it shall, within 12 hours of the making of it or such longer period as the Comptroller may in any case permit, be allowed to amend it, and provided that the Comptroller is satisfied that the error was not made knowingly or recklessly, then, notwithstanding any other customs enactment, that person is not guilty of an offence and any goods that were the subject of the error are not liable to forfeiture.

(4) Where a person by whom an entry is required to be made under subsection (1) fails to make an entry as required, the goods are liable to forfeiture and the master of the vessel or the commander of the aircraft is guilty of an offence and is liable to a fine of \$20,000.

Stores

36. (1) Upon an application being made in such form and manner and containing such particulars as the Comptroller may direct—

- (a) subject to subsection (2), by the master of any vessel over 100 net tonnes; or
- (b) by the commander of any aircraft;

that is about to leave Anguilla for a destination outside of Anguilla, the Comptroller may permit, subject to such conditions and restrictions as he may see fit to impose and having regard to the number of persons on board that vessel or aircraft, the likely destination of the voyage or flight, and the stores, if any, remaining on board that vessel or aircraft, such quantity of goods as he considers reasonable to be removed without payment of duty from any warehouse or on drawback, and loaded on to that vessel or aircraft for use as stores during that voyage or flight.

(2) Where the application under subsection (1) is in respect of fuel and lubricants only, that application may be made by the master of any vessel.

(3) The proper officer may lock up, mark, seal or otherwise secure any goods entered, shipped or carried as stores, or any place or container in which such goods are kept.

(4) If any goods shipped or carried as stores for use on a voyage or flight outside of Anguilla are, without the authority of the proper officer, landed or unloaded at any place in Anguilla or in any way consumed or offered for consumption in Anguilla, the goods are liable to forfeiture, and the master or commander and the owner of the vessel or aircraft are guilty of an offence and are liable on conviction to a fine of \$5,000 or 3 times the value of the goods, whichever is the greater.

(5) If any vessel or aircraft, having left Anguilla for a destination outside Anguilla fails to reach that or any other destination outside of Anguilla, and returns to Anguilla, and in the opinion of the proper officer the deficiency in the stores of that vessel or aircraft is in excess of the quantity that might reasonably have been consumed having regard to the period between the departure and the discovery of the deficiency, the master or commander—

- (a) shall pay to the Comptroller the duty on that deficiency; and
- (b) is guilty of an offence and is liable to a fine of \$10,000 or 3 times the value of that deficiency, whichever is the greater.

Clearance

37. (1) Save as the Comptroller may otherwise permit—

- (a) the master of any vessel intending to depart from any customs port or any other place in Anguilla; and
- (b) the commander of any aircraft intending to depart from any airport or any other place in Anguilla;

to a destination outside Anguilla, shall obtain clearance from Customs in the prescribed form and manner or as the Comptroller otherwise directs.

(Act 15/2010, s. 11)

(2) Any person applying for clearance under subsection (1) shall—

- (a) deliver to Customs in such form and manner and containing such particulars as the Comptroller may direct—
 - (i) an account of all cargo and stores taken on or remaining on board the vessel or aircraft in Anguilla, and
 - (ii) in respect of vessels, a certificate of clearance from the Superintendent of Ports;
- (b) produce all such books and documents in his custody or control relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as the proper officer may require; and
- (c) answer all such questions relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as may be put to him by the proper officer.

(Act 15/2010, s. 11)

(3) Where clearance is sought under subsection (1) for any vessel that is in ballast, or any vessel or aircraft that has on board no goods other than stores, passengers' accompanied baggage or

empty containers upon which no freight or profit is earned, Customs shall, on the application of the master or commander, clear that vessel or aircraft as in ballast.

(Act 15/2010, s. 11)

(4) Any officer may board any vessel that is cleared outwards from a port at any time while within the territorial sea of Anguilla, or any aircraft which is cleared outwards and is within Anguilla, and require the production of the clearance of such vessel or aircraft, and, if the master of the vessel or the commander of the aircraft refuses to produce or to answer such questions as the officer shall put to him concerning the vessel or aircraft, or its cargo or intended flight or voyage, as the case may be, he is guilty of an offence and is liable on conviction to a fine of \$5,000.

(5) Where it appears to any officer that a vessel or aircraft intends or is likely to depart for a destination outside of Anguilla without clearance, he may give such instructions and take such steps by way of the detention of that vessel or aircraft as appear to him necessary to prevent that departure.

(6) If any vessel or aircraft required to be cleared under this section departs from any port or airport for a destination outside of Anguilla without a valid clearance, or after clearance calls at any port or airport without the permission of the proper officer, the master or commander is, except where the departure or call was caused by accident, stress of weather or other unavoidable cause, guilty of an offence and is liable to a fine of \$10,000.

(7) If, 24 hours after the granting of a clearance under subsection (1), the vessel cleared has not left the limits of the port or the aircraft cleared has not taken off for a destination outside of Anguilla, that clearance is void.

(8) If, where any aircraft is required to obtain clearance from any customs airport under this section, any goods are loaded into that aircraft at that airport or port before application for clearance has been made, the goods are liable to forfeiture and where the loading or making waterborne is done with fraudulent intent, any person concerned therein with knowledge of that intent is guilty of an offence and is liable to a fine of \$20,000 or to 3 times the value of the goods, whichever is the greater, or to imprisonment for a term of 2 years or to both and may be arrested.

Power to refuse or demand return of clearance

38. (1) For the purpose of securing the detention of any vessel or aircraft in pursuance of any power or duty conferred or imposed by any customs enactment, or for the purpose of securing compliance with any such enactment—

(a) Customs may at any time refuse clearance of any vessel or aircraft; and

(Act 15/2010, s. 12)

(b) where clearance has been granted to a vessel or aircraft, any officer may at any time while the vessel is within the territorial sea of Anguilla, or the aircraft is at a customs airport, demand that any clearance granted shall be returned to him.

(2) Any demand for the return of a clearance may be made orally or in writing to the master of the vessel or the commander of the aircraft, and if made in writing may be served—

(a) by delivering it to him personally;

- (b) by leaving it at his last known place of abode or business in Anguilla; or
 - (c) by leaving it on board the vessel or aircraft with the person appearing to be in charge or command of it.
- (3) Where a demand for the return of a clearance is made under subsection (2)—
- (a) the clearance shall forthwith become void; and
 - (b) if the demand is not complied with, the master or commander is guilty of an offence and is liable to a fine of \$10,000.

Security for exportation of goods

39. Where—

- (a) warehoused goods; or
- (b) goods on drawback;

are to be exported, the Comptroller may require the exporter to give security in an amount of not less than the duty that would have been chargeable on those goods if they had been imported into Anguilla for home use and if, within 1 month of the exportation of those goods or such longer period as the Comptroller may in any case permit, the exporter does not produce to the Comptroller a certificate, signed by a customs officer in the country to which the goods were exported, certifying that the goods have been imported into that country, or otherwise account for those goods to the satisfaction of the Comptroller, that security is forfeited.

Offences in relation to exportation

40. (1) If any goods that have been loaded or retained on board any vessel or aircraft for exportation or for use as stores are not exported and discharged at a place outside of Anguilla or used as stores but are unloaded in Anguilla, then unless—

- (a) the unloading was authorised by the proper officer; and
- (b) except where that officer otherwise permits, any duty chargeable and unpaid on those goods is paid and any drawback or other allowance made in respect of those goods is repaid;

the master of the vessel or the commander of the aircraft and any person concerned in the unshipping, relanding, landing, unloading or carrying of the goods from the vessel or aircraft without such authority, payment or repayment is guilty of an offence under this section.

(2) The Comptroller may impose such conditions and restrictions as he may see fit with respect to any goods loaded or retained as mentioned in subsection (1) that are permitted to be unloaded in Anguilla and, if any person contravenes or fails to comply with, or is concerned in any contravention or failure to comply with, any condition or restriction imposed under this subsection, he is guilty of an offence under this section.

(3) If, after a vessel or aircraft has obtained clearance but before it has left Anguilla, it is discovered that any goods cleared for exportation or for use as stores are no longer on board, then,

unless those goods have been unloaded with the permission of the proper officer, or are stores that could reasonably have been consumed since the granting of the clearance, the master or the commander—

- (a) shall pay to the Comptroller the duty on that deficiency; and
 - (b) is guilty of an offence under this section.
- (4) If any person—
- (a) exports, causes to be exported or attempts to export any goods—
 - (i) concealed in a container holding goods of a different description, or
 - (ii) packed in a manner appearing to be intended to deceive an officer;
 - (b) directly or indirectly exports or causes to be exported or entered any goods found not to correspond with the entry made in respect of them;
 - (c) exports or attempts to export any—
 - (i) warehoused goods,
 - (ii) goods chargeable with any duty that have been transferred from an importing vessel or aircraft, or
 - (iii) goods entitled to drawback on exportation;

he is guilty of an offence under this section.

(5) Where any person is guilty of offence under this section, he is liable to a fine of \$20,000, or 3 times the value of the goods, whichever is the greater, or to imprisonment for a term of 2 years or to both, and may be arrested, and any goods in respect of which the offence was committed are liable to forfeiture.

Exportation of prohibited or restricted goods

41. (1) If any goods are—
- (a) exported or shipped as stores; or
 - (b) brought to any place in Anguilla for the purpose of being exported or shipped as stores;

and the exportation or shipment is contrary to any prohibition or restriction for the time being in force with respect to those goods under or by virtue of any enactment, the goods are liable to forfeiture and, subject to subsection (3), the exporter or intending exporter of the goods and any agent of his concerned in the exportation or shipment or intended exportation or shipment are guilty of an offence and are each liable to a fine of \$10,000 or 3 times the value of the goods, whichever is the greater.

(2) Any person knowingly concerned in the exportation or shipment as stores, or in the attempted exportation or shipment as stores, of any goods with intent to evade any such prohibition or

restriction is guilty of an offence and, subject to subsection (3), liable to a fine of \$20,000 or 3 times the value of goods, whichever is the greater, or to imprisonment for a term of 2 years or to both and may be arrested.

(3) Where the goods in respect of which any of the offences specified in subsections (1) and (2) above were committed are a controlled drug as defined in the Drugs (Prevention of Misuse) Act, a person guilty of an offence under this section is liable—

- (a) on summary conviction to a fine of \$250,000 or to imprisonment for 5 years or to both; or
- (b) on indictment to a fine of \$500,000 or to imprisonment for 20 years or to both.

PART 5

IMPORTATION AND EXPORTATION BY POST

Importation and exportation of goods by post

~~32.~~ 41-A (1) Without prejudice to any other provision of this Act—

- (d) all letters arriving in Anguilla from abroad shall be produced to the proper officer and, if in his opinion any such letter could contain other than written or printed material, he may require it to be opened in the presence of the Postmaster or any person authorised by him and, if any such letter is found to contain dutiable, restricted or prohibited goods, such goods are liable to forfeiture;
- (e) all postal packages arriving in Anguilla from abroad shall be accompanied by a customs declaration and shall be produced to the proper officer, who may require them to be opened in the presence of the Postmaster or any person authorised by him, and where any goods contained in such package—
 - (i) do not correspond with any declaration of contents made in respect of them, or
 - (ii) are not accompanied by a customs declaration,those goods are liable to forfeiture; and
- (f) no goods imported into Anguilla by post shall be allowed to be removed from the control of the Postmaster until all duty chargeable on them has been paid.

(2) Without prejudice to any other provision of this Act—

(d) all letters posted in Anguilla for transmission abroad shall be produced to the proper officer and, if in his opinion any such letter could contain other than written or printed material, he may require it to be opened in the presence of the Postmaster or any person authorised by him and, if any such letter is found to contain restricted or prohibited goods, such goods shall be liable to forfeiture;

(e) all postal packages posted in Anguilla for transmission abroad shall be accompanied by a customs declaration and shall be produced to the proper officer, who may require them to be opened in the presence of the Postmaster or any person authorised by him, and where any goods contained in such package—

(i) do not correspond with any declaration of contents made in respect of them, or

(ii) are not accompanied by a customs declaration,

those goods are liable to forfeiture.

(3) Without prejudice to subsection (1) or (2), any person who—

(f) claims a letter or postal package arriving in Anguilla; or

(g) posts a letter or postal package in Anguilla for transmission abroad;

which contains currency, cheques or monetary instruments, or any combination thereof, of or exceeding \$27,000, or the equivalent in any currency or combination of currencies, shall declare and make a report of same in such form and manner and containing such particulars as the Comptroller may direct.

(Act 15/2010, s. 8)

(4) Any person failing to declare and make a report as required under subsection (3) is guilty of an offence and is liable to a fine of \$10,000 or 3 times the value of the currency, cheques or monetary instruments not declared or reported, whichever is greater.

(Act 15/2010, s. 8)

(5) Without prejudice to any other provision of this Act, the Governor in Council may make regulations prescribing the procedure on the importation and exportation of postal packets and may exempt such importation or exportation from such requirements of such sections of the Act as he thinks fit.

Express shipments

41-B. (1) The express shipments will be subject to specific expedited procedures provided in the Regulations, which shall

(a) provide for information required to release an express shipment to be submitted and processed before the shipment arrives;

(b) allow a simplified customs declaration through electronic means;

(c) expedite the release of express shipments;

(d) provide for these shipments, under normal circumstances, to be released immediately after arrival, provided that all required documentation and data are submitted;

Express delivery companies

41-C. (1) Companies engaged in the provision of express delivery or courier services must request authorization from the customs administration and provide a guarantee, in accordance with the provisions of the Regulations.

(2) Registered express delivery companies must comply with the following requirements and obligations set forth in the Regulations, including -

- (a) provide adequate infrastructure and payment of customs expenses related to processing of expedited shipments at dedicated facilities;
- (b) maintain electronic transmission capability and interconnection with the customs automated system;
- (b) submit in advance of the arrival of the shipment the information necessary for the release;
- (c) maintain a high degree of control over expedited shipments through these of internal security, logistics, and tracking technology from pick-up to delivery;
- (d) provide expedited shipment from pick-up to delivery;
- (e) assume liability for payment of customs duties, taxes, fees and charges for the goods;
- (f) have a good record of compliance with customs and fiscal laws and regulations;
- (g) comply with other conditions provided in the Regulations.

Unloading of packages

41-D. The air carrier shall

- (a) separate the express delivery packages, which shall be duly identified in accordance with the provisions of the Regulations.
- (b) Move the express delivery packages to the facilities provided for their separation and deliver them to the express delivery company. The packages that do not have the required identification, must be entered to the customs warehouse as general cargo.

The participation of the customs officers in the reception of the conveyance, unloading of vehicles and unloading of goods will be subject to this Act, the regulations and the application of risk criteria.

Transportation of express delivery goods in own aircrafts

41-E. In the case of express delivery or courier companies that transport express delivery shipments, as well as general cargo, in aircrafts owned by them, the company shall submit the cargo manifest and the express delivery manifest.

Identification of express delivery consignments

41-F. Packages containing express delivery goods arriving or departing Anguilla must be clearly identified by special markings and must be presented separately from general cargo. Each consignment must be sealed and contain a label with the following information:

- (a) identification of the exporter or shipper;
- (b) name and address of the shipper;
- (c) identification of the express delivery company;
- (d) name and address of consignee;
- (e) description and quantity of the goods or documents contained therein;
- (f) gross weight of the package expressed in [kilograms]; and
- (g) customs value of the goods.

Categories of goods in the express deliveries

41-G. The goods included in the express delivery or courier modality must be classified by the express delivery or courier

company in one of the following categories:

- (a) correspondence and documents. Any message, information or data sent through papers, letters, photographs or electronic media, catalogs, except software, with no commercial value and not subject to payment of duties or taxes, restrictions or prohibitions.
- (b) dutiable goods. Goods valued at no more than X and those that may be classified as samples, provided they are not subject to restrictions or non-tariff regulations.
- (c) shipments not subject to simplified processing. Other goods shall be subject to the general procedures, including goods subject to non-tariff restrictions, goods subject to a customs procedure other than for home use or final exportation or low value shipments for non-commercial purposes.

Separation and clearance of express delivery shipments

41-H. (1) The express delivery or courier company shall electronically transmit the cargo manifest in advance of the arrival of the goods, once the general cargo manifest containing the consolidated or master air waybill consigned in its name has been transmitted.

(2) Express delivery companies may be authorized to proceed to the separation and clearance of express delivery shipments in customs controlled areas. The customs administration may assign customs officers to be present when necessary.

(3) Once the process of classification or separation of shipments has been completed, when there are differences detected in the information declared in the express delivery manifest, the express delivery company or courier must, within a maximum period of five hours, transmit the corresponding corrections and make the necessary justifications. When the differences refer to the weight, quantity of packages or description of the goods, the corrections must be made with the prior authorization of customs.

(4) Each express waybill that covers a shipment must contain the information provided by the sender regarding the name of the consignee, description of the merchandise, invoice price and freight.

(5) The express delivery manifest must contain the information specified in the Regulations.

(6) The clearance of goods referred to in subsection 41-G(1)(a) will be made with the information contained in the express delivery manifest once the manifest has been separated and the risk criteria has been applied. For shipments in this category, the express delivery company may transmit in the express delivery manifest, a single consolidated waybill that will cover all shipments, indicating the number of packages and gross weight expressed in [kilograms].

(7) For the clearance of goods referred to in subsection 41-G(1)(b), once the general cargo and express delivery manifests have been transmitted, the express delivery or courier company must present the simplified declaration, which may cover one or several waybills belonging to different consignees, provided that the customs value of the goods consigned in each one of the shipments is less or equal to X and they are not subject to non-tariff restrictions and regulations.

(8) Shipments referred to in subsection 41-G(1)(b) may also be cleared by the consignee thereof, by means of a regular customs declaration. The commercial invoice and the individualized air waybill are mandatory for these shipments.

(9) Goods referred to in subsection 41-G(1)(c), goods identified as small shipments of a non-commercial nature and goods subject to regulations such as permits, certificates, authorizations, exemptions or others, or by non-tariff restrictions and regulations, such as application of preferential tariffs, quotas, safeguards, countervailing duties or others, may not be included in the simplified goods declaration.

(10) The express delivery or courier company shall have a period of six hours after receipt of the goods in the designated customs controlled area, for the separation of shipments and submission of the simplified goods declaration. If such declaration is not filed within the indicated term, the express delivery or courier company must transfer the goods to the temporary warehouse or to the customs warehouse regime.

(11) Goods referred to in subsection (1)(c) must be immediately delivered to the customs or temporary warehouse at the end of the separation process. If the goods have not been delivered to the customs or temporary warehouse, the express delivery company shall be liable for the respective tax obligations and penalties. These goods shall be cleared immediately through the general procedures in accordance with the respective regime or shall be transferred to customs warehouses.

(12) In application of risk criteria, the customs authority may apply documentary or physical and documentary recognition on a general or individual basis to the shipments declared in the fast delivery manifest and the simplified goods declaration.

(13) When other authorities must inspect the goods, they must coordinate with the customs authority the way and the moment for inspection.

PART 7

COASTING TRADE

Definition of coasting trade

42. (1) Subject to the provisions of this Part, the carriage of goods by sea or air from one part of Anguilla to another is coasting trade, and any vessel or aircraft whilst so employed is a coasting vessel or coasting aircraft.

(2) The Governor in Council may by order deem the carriage of any goods or any class or description of goods from any specified place in Anguilla to another specified place not to be coasting trade.

Power to make regulations as to coasting trade

- 43.** (1) The Governor in Council may make regulations—
- (a) regulating the loading, unloading or making waterborne for loading of goods carried or to be carried by way of coasting trade;
 - (b) prescribing the procedure to be followed by—
 - (i) coasting vessels on their arrival at or departure from any port, and
 - (ii) coasting aircraft on their arrival at or departure from any airport; and
 - (c) permitting the Comptroller to give directions;

and different regulations may be made in respect of coasting vessels and coasting aircraft.

(2) Without prejudice to the generality of subsection (1), regulations made under that subsection may provide for the imposition of a fine of \$10,000 for any contravention of or failure to comply with any such regulation or any direction given under any such regulation, and for the forfeiture of any goods involved in any such offence.

Limits on coasting trade

44. (1) Subject to subsection (2), no goods not yet entered on importation and no goods for exportation shall be carried by way of coasting trade in any vessel or aircraft used for that purpose.

(2) The Comptroller may permit, subject to such conditions and restrictions as he may see fit to impose—

- (a) any vessel or aircraft to carry goods by way of coasting trade notwithstanding that that vessel or aircraft is carrying goods brought therein from a place outside of Anguilla and not yet entered on their importation, if a vessel or aircraft so permitted to carry such unentered goods by way of coasting trade is not for the purposes of this Part a coasting vessel or a coasting aircraft;
- (b) goods brought by another vessel or aircraft to a place in Anguilla from a place outside Anguilla that are consigned to and intended to be delivered to another place in Anguilla to be transhipped before due entry of the goods has been made to a coasting vessel or a coasting aircraft for carriage by way of coasting trade to that other place; and
- (c) any vessel or aircraft that has begun to load goods for exportation or for use as stores on a voyage to a destination outside Anguilla to carry goods by way of coasting trade until that loading has been completed.

(3) If any goods are carried by way of coasting trade in contravention of subsection (1) or any goods are loaded, unloaded, carried or otherwise dealt with contrary to any condition or restriction imposed by the Comptroller under subsection (2), those goods are liable to forfeiture and the master of the vessel or the commander of the aircraft is guilty of an offence and is liable to a fine of \$10,000 or 3 times the value of the goods, whichever is the greater.

Clearance of coasting vessels and aircraft

45. (1) Subject to the provisions of this subsection and save as the Comptroller may otherwise permit, no coasting vessel or coasting aircraft shall depart from any customs port or customs airport in Anguilla before its master or commander has produced to Customs an account of the goods carried in that vessel or aircraft, in such form and manner and containing such particulars as the Comptroller may direct, and such account, when approved by Customs, shall be the clearance of that vessel or aircraft.

(Act 15/2010, s. 13(a))

(2) Where an account is required to be produced under subsection (1) and—

- (a) the account is produced in the form of an electronic document and Customs has not responded at the expiry of one hour from the time the account was produced; or
- (b) in any other case, where no officer is stationed at the place where the account is required to be produced;

the vessel or aircraft may depart from that place and, upon departure, shall proceed directly to an approved wharf or customs airport and the account be produced to the proper officer.

(Act 15/2010, s. 13(b))

(3) On the application of the master of any coasting vessel or the commander of any coasting aircraft, the Comptroller may grant, subject to such conditions and restrictions as he may see fit to impose, a general clearance for that vessel or aircraft, and any goods, class or description of goods to be carried in it.

(4) Any general clearance granted under subsection (3) may be revoked at any time by the Comptroller by notice in writing delivered to the master or owner of the vessel or the commander or owner of the aircraft or to any member of the crew on board that vessel or aircraft.

(5) Except as provided by this section, if any coasting vessel or coasting aircraft carrying goods departs from any place in Anguilla without clearance, whether obtained before or after that departure, or in contravention of any condition or restriction imposed by the Comptroller upon a general clearance of that vessel or aircraft under subsection (3), the master of that vessel or the commander of that aircraft is guilty of an offence and is liable to a fine of \$10,000, or 3 times the value of the goods, whichever is the greater, and any goods in respect of which the offence was committed are liable to forfeiture.

Cargo book

46. (1) The master of every coasting vessel and the commander of every coasting aircraft shall keep a cargo book in such form and manner and containing such particulars as the Comptroller may direct.

(2) The master of a coasting vessel or the commander of a coasting aircraft shall, upon demand made by the proper officer, produce for inspection the cargo book of that vessel or aircraft.

(3) Subject to subsection (4), where—

- (a) goods have been loaded onto or unloaded from a coasting vessel or a coasting aircraft at a place in Anguilla, then before that vessel or aircraft departs from that place; or
- (b) a coasting vessel or a coasting aircraft arrives at a place in Anguilla where goods are to be unloaded, then before any goods are unloaded;

the master of that vessel or the commander of that aircraft shall produce to the proper officer the cargo book of that vessel or aircraft.

(4) Where no officer is stationed at the place where a cargo book is required to be produced under subsection (3), the vessel or aircraft may depart from that place, or be unloaded, whereupon the cargo book shall be produced to an officer at the first place the vessel or aircraft arrives where an officer is stationed.

(5) Where the master of a coasting vessel or the commander of a coasting aircraft fails to keep or produce a cargo book as required by this section, he is guilty of an offence and is liable to a fine of \$10,000 or 3 times the value of the goods, whichever is the greater, and any goods unloaded in contravention of subsection (3) are liable to forfeiture.

Examination of goods on coasting vessels

47. (1) The proper officer may examine any goods carried or to be carried in a coasting vessel—

- (a) at any time while they are on board the vessel; or

(b) at any place in Anguilla to which the goods have been brought for shipment in, or at which they have been unloaded from the vessel and for that purpose may require any container to be opened or unpacked, and any such opening or unpacking and any repacking shall be done by or at the expense of the proprietor of the goods.

(2) The proper officer may at any time—

(a) board and search a coasting vessel; or

(b) require any document that should properly be on board a coasting vessel to be produced or brought to him for examination;

and, if the master of the vessel fails to allow the proper officer to board and search or fails to produce or bring any such document to the proper officer when required, he is guilty of an offence and is liable to a fine of \$10,000.

Offences in relation to carriage of goods coastwise

48. (1) If in the case of any coasting vessel or coasting aircraft—

(a) goods are taken on board or unloaded at a place outside of Anguilla; or

(b) the vessel or aircraft touches at some place outside of Anguilla or deviates from its voyage or flight and the master of the vessel or the commander of the aircraft does not report that fact in writing to the proper officer at the first place in Anguilla at which the vessel or aircraft arrives where an officer is stationed;

then those goods are liable to forfeiture if they are still on board and the master or commander is guilty of an offence and is liable to a fine of \$10,000 or 3 times the value of the goods, whichever is the greater.

(2) If any goods—

(a) are carried by way of a coasting vessel or a coasting aircraft contrary to any prohibition or restriction for the time being in force with respect to those goods under or by virtue of any enactment; or

(b) are brought to any place in Anguilla for the purpose of being so carried or shipped;

then those goods are liable to forfeiture and, subject to subsection (3), the shipper or intending shipper of the goods is guilty of an offence and is liable to a fine of \$20,000 or 3 times the value of the goods, whichever is the greater, or to imprisonment for a term of 2 years or to both and may be arrested.

(3) Where the goods in respect of which any of the offences specified in subsection (2) were committed are a controlled drug as defined in the Drugs (Prevention of Misuse) Act, a person guilty of an offence under this section is liable—

(a) on summary conviction to a fine of \$250,000 or to imprisonment for 5 years or to both;
or

(b) on indictment to a fine of \$500,000 or to imprisonment for 20 years or to both.

Power to regulate small craft

49. (1) ~~The Governor in Council may make~~ regulations with respect to vessels not exceeding 50 net tonnes ~~and any such regulations~~ may in particular make provision as to the purposes for which and the limits within which such vessels may be used, and different provisions may be made by such regulations for different classes or descriptions of such vessels.

(2) Any vessel that is used contrary to any regulation made under this section is liable to forfeiture.

PART 8
WAREHOUSING

Approval of warehouses

50. (1) The Comptroller may approve, for such periods and subject to such conditions and restrictions as he may see fit to impose, places of security for the deposit, keeping and securing of—

- (a) any goods chargeable with a duty of customs without payment of that duty;
- (b) any goods for exportation or for use as stores, being goods not eligible for home use;
and
- (c) any goods permitted by or under this Act to be warehoused on drawback;

and any place so approved shall be referred to in this Act as a “warehouse”.

(2) Without prejudice to the generality of subsection (1), the Comptroller may give directions—

- (a) restricting the goods that may be permitted to be warehoused in a particular warehouse to those goods owned by the occupier of that warehouse;
- (b) making the approval of any warehouse conditional upon the warehousing of a minimum amount of goods during a specified period, and different amounts may be required in respect of warehouses restricted under paragraph (a) and warehouses not so restricted;
- (c) as to goods that may or may not be deposited in any particular warehouse or class of warehouse; or
- (d) as to the part of any warehouse in which any class or description of goods may be kept or secured.

(3) If, after the approval of a warehouse under subsection (1), the occupier of that warehouse contravenes or fails to comply with any condition or restriction imposed by the Comptroller under that subsection, he is guilty of an offence and is liable to a fine of **\$10,000**.

(4) The Comptroller may at any time for reasonable cause revoke or vary the terms of any approval given under subsection (1).

(5) Where the Comptroller intends to revoke or not to renew any approval of a warehouse given under subsection (1), he shall, not later than 3 months before the date when the revocation is due to take effect or the approval is due to expire (hereinafter in this section referred to as the “date of cessation”), give notice of his intention in writing, and such notice is deemed to have been served on all persons interested in any goods then deposited in that warehouse, or permitted by or under this Act to be so deposited between the date of the giving of the notice and the date of cessation, if addressed to the occupier of, and left at, the warehouse.

(6) If, after the date of cessation or such later date as the Comptroller may in any case permit, uncleared goods remain in a place no longer approved under subsection (1), they may be taken by an officer to a customs warehouse and, without prejudice to any other power of earlier sale provided by this Act, if they are not cleared within 1 month, may be sold.

Special facilities for storage of special categories of goods

50-A. The Comptroller may approve special areas with specific requirements and conditions for the storage of certain categories of goods whose storage in a warehouse present particular danger or that require special facilities for storage, including petroleum, oil and by-products.

Power to make regulations as to warehouses and warehoused goods

51. (1) ~~The Governor in Council may make regulations for the control of the depositing, marking, keeping, securing and treatment of goods in, and the removal of goods from warehouses may —~~

- ~~(a) for the control of the depositing, marking, keeping, securing and treatment of goods in, and the removal of goods from warehouses;~~
- (b) ~~providing~~ provide for different provisions for different types of warehouses or parts of warehouses, or for goods of different classes or descriptions, or goods of the same class or description in different circumstances; and
- (c) ~~imposing~~ impose fines in amounts of \$10,000 for any contravention of, or failure to comply with, any regulation or any direction given or any requirement made under any regulation or direction and for the forfeiture of any goods involved in any such offence.

(2) The Comptroller may give such directions under this Act as he thinks fit and in particular for—

- (a) the proper conduct and management of warehouses, including the imposition of conditions and restrictions subject to which goods may be carried to or from, deposited in, kept in or removed from warehouses, or made available to their owners for prescribed purposes;
- (b) the attendance of officers at warehouses;
- (c) the provision of facilities to officers;
- (d) the minimum quantities of descriptions of goods that may be deposited in or removed from a warehouse at any one time; and
- (e) goods to be destroyed or abandoned to the Comptroller without payment of duty, in such circumstances and subject to such conditions and restrictions as may be determined by the directions.

Warehousing of goods

52. (1) No goods, class or description of goods, prescribed in Schedule 1 may be warehoused.

(2) The Governor in Council may, by regulation, delete from, vary or add to the goods, class or description of goods prescribed in Schedule 1.

(3) No damaged goods or goods enclosed in any insecure or otherwise defective container or in a container from which any portion of the contents have been removed may be warehoused.

(4) Save as the Comptroller may otherwise permit, and subject to such conditions and restrictions as he may see fit to impose, no warehoused goods may remain warehoused for longer than 2 years and any warehoused goods that remain warehoused after such time shall be entered for re-warehousing or for home use or shall be re-exported.

(5) The Governor in Council may, by regulation, specify any goods, class or description of goods which are required to be warehoused upon their importation.

(6) If any goods are warehoused or fail to be warehoused or re-warehoused or fail to be removed from warehouse contrary to this section, they are liable to forfeiture.

Production of goods in warehouse

53. (1) The occupier of a warehouse shall produce to any officer on request any goods deposited therein that have not been lawfully authorised to be removed therefrom and, if he fails so to produce any goods, he is guilty of an offence and is liable to a fine of \$1,000 or 3 times the value of the goods, whichever is the greater.

(2) The occupier of a warehouse shall so stow every container or lot of goods warehoused therein that easy access may be had thereto, and for every container or lot not so stowed he is guilty of an offence and is liable to a fine of \$1,000.

Proprietor to inspect and show goods for sale

54. (1) Without prejudice to any restrictions or conditions imposed by the occupier of the warehouse, the proprietor of any warehoused goods may with the authority of the proper officer—

- (a) inspect the goods and their container and prevent any loss therefrom; and
- (b) show the goods for sale.

(2) Where the proper officer requires that he shall be present at any such inspection or showing of goods, he shall so far as is practicable attend at any reasonable time requested, but is not obliged to attend for the purposes of this section more than once in any period of 24 hours at the request of the same person or in respect of the same goods.

(3) The proper officer may allow the proprietor of any warehoused goods to take such samples thereof subject to such conditions, and with or without entry or payment of duty, as he thinks fit.

(4) If any person does, without the permission of the proper officer, any act requiring such permission or contravenes or fails to comply with any condition or restriction imposed under this section, he is guilty of an offence and is liable on conviction to a fine of \$5,000 and the goods are liable to forfeiture.

Entry, marking, etc. of goods for warehousing

55. (1) Imported goods which are on importation entered for warehousing are deemed to be duly warehoused as from the time when Customs certifies that the entry and warehousing of those goods is complete.

(Act 15/2010, s. 14)

(2) Before any goods are warehoused, the proprietor of the goods shall deliver to Customs an entry thereof in such form and manner and containing such particulars as the Comptroller may direct.

(Act 15/2010, s. 14)

(3) Any goods brought to a warehouse for re-warehousing after removal for that purpose from another warehouse shall be dealt with in like manner as if they were goods being warehoused for the first time.

(4) Save as permitted by or under this Act, goods shall be warehoused in the containers or lots in which they were first entered for warehousing.

(5) The proprietor of any warehoused goods shall mark the containers or lots thereof in such manner as the proper officer may direct and shall, subject to any further such direction, keep them so marked while they are warehoused and, if any person fails to comply with the provisions of this subsection, he is guilty of an offence and is liable to a fine of \$10,000.

(6) Where without the authority of the proper officer and save as permitted by or under this Act—

- (a) any goods are warehoused in containers or lots other than those in which they were entered for warehousing; or
- (b) any alteration is made in any goods in warehouse, or in the packing or marking of the containers or lots of any such goods, after the goods have been duly warehoused;

those goods are liable to forfeiture.

Re-entry of goods entered for warehousing

56. (1) Subject to subsection (2), any goods that have been entered for warehousing or that have been permitted to be removed from a warehouse for transport to another warehouse may, at any time before they have been warehoused or re-warehoused—

- (a) be further entered by their proprietor for home use, if so eligible, for exportation or for use as stores, and shall then be dealt with as if they had been so entered from warehouse; or
- (b) be removed for transport to another warehouse approved for the warehousing of such goods, and shall then be dealt with as if they had been duly warehoused.

(2) Where goods are held in containers, no part of those goods shall be further entered or removed under subsection (1) unless that part consists of one or more complete containers.

Operations on warehoused goods

57. (1) Without prejudice to any other provision of this or any other Act by or under which an operation on warehoused goods is or may be permitted, the Comptroller may, in the case of such goods and, subject to such conditions and restrictions as he may from time to time think fit, permit the sorting, separating, packing or repacking of goods in warehouse and the carrying out on warehoused goods of such other operations necessary for the preservation, sale, shipment or disposal of the goods as he sees fit, and may give directions as to the warehouse or the part of any warehouse in which any such operation on goods may be carried out.

(2) Any person who on or before 1st November 2001 was permitted to carry out an operation on goods of any class or description in warehouse, not being such an operation as is or may be permitted by or under any such other provision as aforesaid, shall be deemed to have been granted similar permission by the Comptroller under the foregoing subsection.

(3) The Comptroller may at any time revoke or vary any permission granted or deemed to have been granted under this section.

(4) If any person carries out any operation on goods in warehouse otherwise than in accordance with permission granted or deemed to have been granted under this section, or otherwise than as permitted by or under such other provision as aforesaid, he is guilty of an offence and is liable to a fine of \$10,000 and the goods are liable to forfeiture.

Deficiency in warehoused goods

58. (1) If, at any time after goods have been warehoused and before they have been lawfully removed, all or part of those goods are found to be missing then, without prejudice to any other fine or liability to forfeiture incurred by or under this Act, the occupier of the warehouse—

(a) shall pay to the Comptroller—

(i) the duty that such goods would have borne if they had been entered for home use on the date of the discovery of the deficiency, or

(ii) in the case of goods not eligible for home use, an amount that in the opinion of the proper officer was the value of the goods at the date of the deficiency; and

(b) is guilty of an offence and is liable to a fine of \$10,000 or 3 times the value of the goods, whichever is the greater.

(2) Where any goods have, without payment of duty, been lawfully removed from a warehouse for transport to some other warehouse or to some other place, and all or part of those goods fail to reach that other warehouse or place then, without prejudice to any other fine or liability to forfeiture incurred by or under this Act, the proprietor of the goods—

(a) shall pay to the Comptroller—

(i) the duty that such goods would have borne if they had been entered for home use on the date of the discovery of the deficiency, or

(ii) in the case of goods not eligible for home use, an amount which in the opinion of the proper officer was the value of the goods at the date of the discovery of the deficiency; and

(b) is guilty of an offence and is liable to a fine of \$10,000 or 3 times the value of the goods, whichever is the greater.

(3) Subject to subsection (4), no compensation shall be payable by, and no action shall lie against, the Comptroller for any loss or damage caused to any goods while in a warehouse or for any unlawful removal of goods from a warehouse.

(4) Where warehoused goods are damaged, destroyed or unlawfully removed by or with the assistance or connivance of an officer, and that officer is convicted of an offence in relation to that damage, destruction or removal then, except where the occupier of the warehouse or the proprietor of the goods was a party to the offence, the Comptroller shall pay compensation for any loss caused by such damage, destruction or removal and, notwithstanding any other customs enactment, no duty shall be payable on the goods by the occupier or the proprietor and any sum paid by way of duty by him before the conviction shall be repaid.

Removal of goods from warehouse

59. (1) Before any goods are removed from warehouse the proprietor of the goods shall deliver to Customs an entry thereof in such form and manner and containing such particulars as the Comptroller may direct.

(Act 15/2010, s. 15)

(2) Subject to any provision of this or any other Act, or of any regulation made thereunder as to the purposes for which any goods may be warehoused, goods may be entered under this section for any of the following purposes—

- (a) home use;
- (b) exportation;
- (c) use as stores;
- (d) subject to such conditions and restrictions as the Comptroller sees fit to impose, removal to another warehouse approved for the warehousing of such goods;
- (e) subject to such conditions and restrictions as aforesaid, removal for such other purposes, to such places and for such periods as the Comptroller may allow.

(3) Warehoused goods shall not be removed from the warehouse or loaded onto any vessel, aircraft or vehicle for removal or for exportation or use as stores except with the authority of and in accordance with any directions given by the proper officer.

Duty liability on warehoused goods

60. (1) Save as permitted under this Act—

- (a) duty on warehoused goods shall be chargeable at the time of the removal of those goods from the warehouse; and
- (b) no goods shall be removed from warehouse until all duty due on them has been paid.

(Act 15/2010, s. 16)

(2) The amount payable in respect of any duty is based on the value of the goods at the time of removal from the warehouse.

(3) Save as otherwise provided under this Act, the duties and rates chargeable on warehoused goods are those in force with respect to the goods of that class or description at the time of delivery of the entry to remove the goods from the warehouse.

(Act 15/2010, s. 16)

(4) The rate of duties of customs on goods that have been lawfully removed from warehouse without payment of duty with the intention that they shall be re-warehoused, but that are entered for home use before being re-warehoused, is that in force with respect to goods of that class or description—

- (a) where removal for home use is allowed under section 65 on the giving of security for the duty chargeable thereon, at the date of the giving of the security; or
- (b) in any other case, at the date of payment.

(5) Subject to subsection (7), where under or by virtue of any enactment the amount payable in respect of any duty is based on the quantity of the goods, the quantity shall be taken as at the time of entry into a warehouse.

(6) Where the quantity of goods is ascertained by taking an account thereof, it shall be ascertained by reference to weight or measure, as the case may be.

(7) Where warehoused goods have deteriorated or have been damaged to such a degree that the Comptroller is satisfied that they have become unsaleable, he shall allow such abatement of the duty chargeable on them as he sees fit.

(8) Where any sum has been paid in respect of duty before the appropriate date under this Act, the difference, if any, between the sum so paid and the amount properly payable shall be paid or repaid as the case may be.

Removal of goods from warehouse without payment of duty

61. Without prejudice to any other provision of this Act authorising the removal of goods from warehouse without payment of duty, the Comptroller may permit warehoused goods entered for removal for any purpose, other than home use, to be removed for that purpose, subject to such conditions and restrictions as he may see fit to impose, without payment of duty, but where any condition or restriction imposed under this section is contravened or not complied with, the goods are liable to forfeiture.

Provisions as to goods to be deposited in a customs warehouse

62. (1) The following provisions of this section shall have effect in relation to any goods which are deposited in a customs warehouse under or by virtue of this Act.

(2) The Comptroller may appoint any place for the deposit of goods, for the security of those goods and of any duty chargeable on them and any place so appointed shall be referred to in this Act as a customs warehouse.

(3) Where, in respect of any goods that may or are required to be warehoused, the Comptroller is of the opinion that it would be undesirable or inconvenient to deposit such goods in a customs warehouse, he may deem those goods to be deposited in a customs warehouse, and this section shall then apply to those goods as if they were deposited in such a warehouse.

(4) Such rent shall be payable in respect of any goods deposited in a customs warehouse as the Governor in Council may by regulation prescribe.

(5) The Comptroller may, in respect of any goods deposited in a customs warehouse, do all such acts as appear to him necessary for the custody and preservation of such goods, and the expenses of so doing shall be payable in addition to any other charges payable in respect of those goods, by the importer or owner of the goods.

(6) If any goods deposited in a customs warehouse are in the opinion of the Comptroller of such a character as to require special care or treatment, then—

(a) they shall, in addition to any other charges payable on them, be chargeable with such expenses for the securing, watching and guarding of them as the Comptroller may consider necessary; and

(b) the Comptroller shall not be liable to make good any damage that the goods may sustain.

(7) Save as permitted by or under this Act, no goods shall be removed from a customs warehouse until all duty chargeable on those goods, and any charges—

(a) in respect of the removal of the goods to the customs warehouse; and

(b) arising by virtue of subsections (4), (5) and (6);

have been paid and in the case of goods requiring entry and not yet entered, until entry of those goods has been made.

(8) If any goods deposited in a customs warehouse by the proper officer under this Act are not cleared within 10 weeks after they have been so deposited, or such longer time as the Comptroller may in any case allow, the Comptroller may, 7 days after giving notice of sale in the *Gazette*, or in the case of goods that are in the opinion of the Comptroller of a perishable nature forthwith, sell them at auction.

(9) All money arising from the sale of any goods at auction shall be used to pay—

(a) firstly, any duty chargeable on those goods;

- (b) secondly, the expenses of sale;
- (c) thirdly, sums due to the Comptroller in respect of the carriage, warehousing and other services performed and facilities provided in respect of the goods; and
- (d) fourthly, freight and rent due and payable and any other claims due and payable of which notice has been given to the Comptroller;

and the balance, if any, shall be paid to the owner of such goods on his application for the balance, if such application be made within 6 months of the time of the sale of such goods, but otherwise shall be paid into the Consolidated Fund.

(10) When any goods are authorised to be sold under or by virtue of this Act, but cannot be sold or are in the opinion of the Comptroller of a perishable or hazardous nature, he may destroy them.

(11) Any officer having custody of goods in a customs warehouse may refuse to permit the goods to be removed until it is shown to his satisfaction that all freight charges due on those goods have been paid.

Offences in relation to warehouses and warehoused goods

63. (1) Any person who, except with the authority of the proper officer or for just and sufficient cause, opens any door or lock of a warehouse or a customs warehouse or makes or obtains access to any such warehouse or to any goods in such a warehouse, he is guilty of an offence and is liable to a fine of \$20,000 or to imprisonment for a term of 2 years or to both and may be arrested.

(2) Where—

- (a) any goods that have been entered for warehousing are taken into a warehouse without the authority of, or otherwise than in accordance with any direction given by, the proper officer;
- (b) save as permitted by or under this Act, any goods that have been entered for warehousing are removed without being duly warehoused or are otherwise not duly warehoused;
- (c) any goods that have been deposited in a warehouse or a customs warehouse are unlawfully removed or are unlawfully loaded into any vessel, aircraft or vehicle for removal or for exportation or for use as stores;
- (d) any goods entered for warehousing are concealed, either before or after they have been warehoused; or
- (e) any goods that have been lawfully permitted to be removed from a warehouse or a customs warehouse without payment of duty for any purpose are not duly delivered at the destination to which they should have been taken in accordance with that permission;

such goods are liable to forfeiture.

(3) Where any person is in any way concerned with the taking, removal, loading, concealing or non-delivery of goods, as described in subsection (2), he is guilty of an offence and is liable to a fine of \$10,000.

(4) Where any person is in any way concerned with the taking, removal, loading, concealing or non-delivery of goods as described in subsection (2), with intent to defraud the Government of Anguilla of any duty chargeable on those goods or to evade any prohibition or restriction for the time being in force with respect to those goods under or by virtue of any enactment, he is guilty of an offence and, subject to subsection (5), is liable to a fine of \$20,000 or to 3 times the value of the goods, whichever is the greater, or to imprisonment for a term of 2 years or to both and may be arrested.

(5) Where the goods in respect of which the offences specified in subsection (4) were committed are a controlled drug as defined in the Drugs (Prevention of Misuse) Act, a person guilty of an offence under this section is liable—

- (a) on summary conviction to a fine of \$250,000 or to imprisonment for 5 years or to both;
or
- (b) on indictment to a fine of \$500,000 or to imprisonment for 20 years or to both.

PART 9

DUTIES, DRAWBACK, CUSTOMS DEBT, PROHIBITIONS AND RESTRICTIONS

Duty on Imported Goods

Duty on imported goods other than goods entered for warehousing

64. (1) Save as permitted under this Act or Regulations or any other Act or Regulations relating to customs, there shall be raised, levied, collected and paid into the Consolidated Fund of Anguilla duty on all imported goods, which is chargeable at the rates set forth in the ICT—

- (a) when an entry is required in relation to those goods, at the time of delivery of the entry;
or
- (b) in any other case, at the time of the importation of the goods.

(Act 15/2010, s. 17(a))

(2) The duty referred to in subsection (1) shall be chargeable at the following time—

- (a) where an entry for home use is delivered in respect of goods imported into Anguilla, or an entry is delivered in respect of goods to be exported out of Anguilla, at the time of the delivery of the entry in respect of those goods to Customs;
- (b) where an entry is required in respect of the importation of goods into or the exportation of goods out of Anguilla but no entry is delivered to Customs, at the time of the importation or exportation of the goods;

- (c) where goods are removed from any vessel, aircraft or transit shed under any bond or other security, at the time of the delivery of the goods;
- (d) in any other case, at the time of the importation of the goods.

(Act 15/2010, s. 17)

(3) Goods subject to duty shall be deemed to be proper to that class under which they fall in the section and chapter of the ICT and shall be chargeable thereunder.

(4) Duty shall be paid—

- (a) in the currency of the East Caribbean currency authority;
- (b) in the currency of the United States of America; or
- (c) by a draft issued by, or a cheque drawn on and guaranteed by, a licensed domestic bank.

(5) Where any amount shown on any invoice or other document is expressed in a foreign currency, the value of those goods shall be calculated according to the appropriate rate of exchange for that currency quoted by Government bankers on the day in which the duty becomes chargeable.

(Act 15/2010, s. 17)

Delivery of imported goods on giving of security

65. (1) Where it is impracticable immediately to ascertain whether any or what duty is payable in respect of any imported goods that are entered for home use, whether on importation or from a warehouse, the Comptroller may, if he thinks fit and notwithstanding any other provision of this Act, allow those goods to be delivered upon the importer giving security, by deposit of money or otherwise to the satisfaction of the Comptroller, for payment of any amount unpaid that may be payable by way of duty.

(2) Where goods are allowed to be delivered under this section, the Comptroller shall, when he has determined the amount of duty that in his opinion is payable, give to the importer a notice specifying that amount.

(3) On the giving of a notice under subsection (2), the amount specified in the notice or, where any amount has been deposited under subsection (1), any difference between those amounts shall forthwith be paid or repaid, as the case may require.

Goods to be warehoused without payment of duty

66. Any goods that are on their importation permitted to be entered for warehousing are allowed to be warehoused without payment of duty.

Relief from duty of goods entered for transit or transshipment

67. Where goods are entered for transit or transshipment, the Comptroller may, subject to such conditions and restrictions as he sees fit, allow the goods to be removed for that purpose without payment of duty.

Determination of amount of import or export duties and taxes.

67-A 1. The amount of import or export duties payable shall be determined by the customs authorities.

1. Except as otherwise provided, duties, taxes and other customs measures shall be applied according to the examination results.
2. The customs authorities may accept the amount of import or export duty payable determined by the declarant.
3. The duties and taxes to be paid are those in effect on the date of submission of the customs declaration.
4. Where the customs authorities do not examine the declared goods, the duties, taxes and other customs measures shall be applied according to the information provided on the declaration.

Calculation of duty

68. (1) Without prejudice to any other provision of this Act, any amount due by way of customs duty shall be recoverable as a debt due to the Government of Anguilla.

(2) Any duty, drawback, allowance or rebate the rate of which is expressed by reference to a specified quantity or weight of any goods shall be chargeable or allowable on any fraction of that quantity or weight of the goods, and the amount payable or allowable on any such fraction shall be calculated proportionately, but the Comptroller may determine the fractions to be taken into account in the case of any weight or quantity.

(3) For the purpose of calculating any amount due from or to any person under any customs enactment by way of duty, drawback, allowance, repayment or rebate, any fraction of a cent in that amount shall be disregarded.

Date for payment of duty

68-A (1) Unless otherwise provided, specified in this Act, the due date for the payment of duty assessed is X working days after the date on which the written notice of the assessment or re-assessment is given by the Comptroller unless otherwise determined by the Regulations.

(2) Where an appeal or other proceeding results in a re-assessment which states that insufficient duties were paid, the additional duties shall be paid to the Comptroller within X working days of the date of the re-assessment.

(3) Where all or part of any duty remains unpaid after the due date, interest shall be imposed at the rate prescribed by Regulations. All benefits may be withdrawn, authorizations or licenses may be cancelled and subsequent shipments of the debtor may be detained, in accordance with the Regulations.

68-B- Refunds.

(1) Where an amount is paid as duty and such amount is found to be in excess of the duty due and payable, the Comptroller shall refund the excess, unless all or a portion of the refund is set off against other debts.

(2) Where an appeal or other proceeding results in a re-assessment in an amount less than the amount already paid in duties or given as security for payment, the excess duties paid shall be refunded to the appellant or the appellant shall be released from any security given for payment of the duties in excess of the amount properly payable.

(3) Where the refund required by subsection (1) or (2) is not paid within [xx days], interest will apply at the rate prescribed by regulations.

(4) Any obligation on the part of the [Comptroller] to refund duties under subsection (1) shall be suspended pending the outcome of any appeal filed by the Comptroller under this Act or any other Act against the decision requiring the duty to be refunded.

Special provisions

69. (1) If any goods, being goods chargeable with any duty on their importation into or exportation out of Anguilla—

- (a) are imported or exported in any package intended for sale, or of a kind normally sold with those goods, and the package is marked or labelled or commonly sold as, or reputed as containing a specified quantity of those goods, then the package is deemed to contain not less than that specified quantity of those goods;
- (b) are imported or exported in any package intended for sale, or of a kind normally sold with those goods, but the package is not marked or labelled, or commonly sold as, or reputed as containing a specified quantity of those goods, then, unless the importer or exporter is able to satisfy the Comptroller as to the net weight of the goods, the duty shall be calculated on the gross weight of the package and the goods;
- (c) are imported or exported in any package or covering that, in the opinion of the Comptroller—
 - (i) is not the usual or proper package or covering for such goods, or
 - (ii) is designed for separate use, other than as a package or covering for the same or similar goods, subsequent to the importation or exportation,that package or covering shall be deemed to be a separate article; or
- (d) are brought or come into Anguilla as derelict jetsam, flotsam or as a wreck or part of a wreck, and are sold in Anguilla, they are liable to the same duty as goods of that class or description would be subject to at the time of their discovery or sale.

(2) The Governor in Council may by regulation specify standard capacities for containers of liquid goods, and where goods liable to duty by liquid volume are, or are reputed to be, sold in a container of the size specified in the order, the quantity of goods in that container is deemed to be the specified quantity.

Customs debt at importation

69-A (1) Except as otherwise provided in this Act, a customs debt at importation shall be incurred through the placing of goods liable to import duties and taxes under a customs procedure.

(2) A customs debt shall be incurred on the acceptance of the customs declaration.

(3) Duties, taxes, fees and charges incurred shall be subject to the same rules for the determination, assessment, re-assessment, amendment, payment and collection.

(4) The importer shall be the debtor. Where there are two or more, it is owed jointly and severally by all of them. Where there is indirect representation, the person on whose behalf the customs declaration is made shall also be a debtor. Where a customs declaration in respect of a procedure is drawn up on the basis of information which leads to all or part of the import duties not being collected, the person who provided the information required to draw up the declaration and who knew, or who ought reasonably to have known, that such information was false shall also be a debtor.

Customs debt incurred at import through non-compliance

69-B (1) For goods liable to import duties, a customs debt at importation shall be incurred through non-compliance with any of the following:

- (a) any of the obligations laid down in this Act or any other enactment concerning the admission of goods, their removal from customs supervision, or the movement, processing, storage, temporary admission or disposal of such goods;
- (b) any of the obligations laid down in this Act or any other enactment concerning the end-use of goods in Anguilla;
- (c) a condition governing the placing of goods under a customs procedure or the granting, by virtue of the end-use of the goods, of duty exemption or a reduced rate of import duty.

(2) The time at which the customs debt is incurred shall be either of the following:

- (a) the moment when the obligation the non-fulfillment of which gives rise to the customs debt is not met or ceases to be met;
- (b) the moment when a customs declaration is accepted for the placing of goods under a customs procedure where it is established subsequently that a condition governing the placing of the goods under that procedure or the granting of a duty exemption or a reduced rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.

Customs debt at export

69-C (1) A customs debt on exportation shall be incurred through the placing of goods liable to export duties under the export procedure or the outward processing procedure.

(2) The customs debt shall be incurred at the time of acceptance of the customs declaration.

(3) Duties, taxes, fees and charges incurred shall be subject to the same rules for the determination, assessment, re-assessment, amendment, payment and collection.

(3) The exporter shall be the debtor. Where there are two or more, it is owed jointly and severally by all of them. In the event of indirect representation, the person on whose behalf the customs declaration is made shall also be a debtor. Where a customs declaration is drawn up on the basis of information which leads to all or part of the export duties not being collected, the person who provided the information required for the declaration and who knew, or who ought reasonably to have known, that such information was false shall also be a debtor.

Customs debt at export incurred through non-compliance

69-D (1) For goods liable to export duties, a customs debt on exportation shall be incurred through non-compliance with either of the following:

- (a) one of the obligations laid down in Customs legislation for the exit of the goods;
- (b) the conditions under which the goods were allowed to leave Anguilla with total or partial relief from export duties.

(2) The time when a customs debt is incurred shall be one of the following:

- (a) the moment at which the goods actually leave Anguilla without a customs declaration;
- (b) the moment at which the goods reach a destination other than that for which they were allowed to leave Anguilla with total or partial relief from export duties;
- (c) should the customs authorities be unable to determine the moment referred in subsection (b), the expiry of the time limit set for the production of evidence that the conditions entitling the goods to such relief have been fulfilled.

(3) In cases referred to under subsection (1)(a), the debtor shall be any of the following:

- (a) any person who was required to fulfil the obligation concerned;
- (b) any person who was aware or should reasonably have been aware that the obligation concerned was not fulfilled and who acted on behalf of the person who was obligated to fulfil the obligation;
- (c) any person who participated in the act which led to the non-fulfilment of the obligation and who was aware or should reasonably have been aware that a customs declaration had not been lodged but should have been.

(4) In the cases referred to in subsection (1)(b), the debtor shall be any person who must satisfy the conditions which have allowed the goods to leave Anguilla with total or partial exemption from export duties.

Notification of a customs debt

69-E (1) The customs debt shall be notified to the debtor.

(2) Where the amount of import or export duty payable is equal to the amount entered in the customs declaration, release of the goods by the customs authorities shall be equivalent to notifying the debtor of the customs debt.

(3) Where paragraph 2 does not apply, the customs debt shall be notified to the debtor by the customs authorities when they are in a position to determine the amount of import or export duty payable and take a decision thereon.

Limitation of a customs debt

69-F (1) No customs debt shall be notified to the debtor after the expiry of a period of 5 years from the date on which the customs debt was incurred.

Where the customs debt is incurred as the result of an act which, at the time it was committed, was liable to give rise to criminal court proceedings, the 5 year period laid down in subsection (1) shall be extended to a period of [x] years.

(3) where an appeal is lodged, the periods laid down in subsections (1) and (2) are suspended from the date on which the appeal is lodged and shall last for the duration of the appeal proceedings.

(4) where a customs debt is reinstated, periods laid down in subsections (1) and (2) shall be considered as suspended from the date on which the application for repayment or remission was submitted, until the date on which the decision on the repayment or remission was taken.

Extinguishment of customs debt

69-G (1) Without prejudice to the provisions in force relating to non-recovery of the amount of import or export duty corresponding to a customs debt in the event of the judicially established insolvency of the debtor, a customs debt on

importation or exportation shall be extinguished in any of the following ways:

- (a) by payment of the amount of import or export duty;
 - (b) where, in respect of goods declared for a customs procedure entailing the obligation to pay duties, the customs declaration is invalidated;
 - (c) where goods liable to import or export duties are confiscated or where goods liable to import or export duties are seized and simultaneously or subsequently confiscated;
 - (d) where goods liable to import and export duties are destroyed under customs supervision or have been abandoned;
 - (e) where the disappearance of the goods or the non-fulfilment of obligations arising from the customs legislation results from the total destruction or irretrievable loss of those goods as a result of the actual nature of the goods or unforeseeable circumstances or force majeure, or as a consequence of instruction by the customs authorities.
 - (f) Where the customs debt was incurred as a result of noncompliance and the following conditions are met:
 - (i) the failure which led to the incurrence of a customs debt had no significant effect on the correct application of the customs procedures concerned and did not constitute an attempt at deception;
 - (ii) all of the formalities necessary to regularize the situation of the goods are subsequently carried out;
 - (g) where goods released for free circulation duty-free, or at a reduced rate of import duty by virtue of their end-use, have been exported with the permission of the customs authorities;
- (3) In the event of confiscation, the customs debt shall, nevertheless, for the purposes of penalties applicable to customs offences, be deemed not to have been extinguished where, customs duties or the existence of a customs debt provide the basis for determining penalties.

Relief from duty on re-imported goods and other relief

70. (1) Where any goods, being goods previously entered for home use in Anguilla, are imported into Anguilla after exportation from Anguilla and it is shown to the satisfaction of the Comptroller that—

- (a) no duty was due on those goods on any previous importation into Anguilla or that, if any duty was so due, it has been paid;
- (b) no drawback has been paid or duty refunded on their exportation or that any drawback so paid or duty so refunded has been repaid; and
- (c) the goods have not undergone any process outside Anguilla since their exportation;

those goods may be permitted to be imported, subject to such conditions and restrictions as the Comptroller may see fit to impose, without payment of duty.

(2) No repayment of sums overpaid in error shall be made unless the claim thereto is made and evidence in support thereof is submitted to the Comptroller within 1 year of the overpayment, and the claim is established to the satisfaction of the Comptroller.

Offences and forfeiture for breach of conditions

71. (1) Where under any customs enactment, any goods that are relieved or exempted from any duty due on them subject to—

- (a) any condition or restriction; or
- (b) the condition that they will not be sold, lent or otherwise disposed of or any like condition within a period of 10 years or such lesser period as is provided for under a customs enactment;

and that condition or restriction is contravened or not complied with, the duty relieved or exempted shall become payable by the person who, but for that relief or exemption, would have had to pay the amount of such duty, he and any person knowingly concerned in such contravention or non-compliance is guilty of an offence and is liable to a fine of \$20,000 or 3 times the duty relieved, whichever is the greater, or to imprisonment for a term of 2 years or to both and may be arrested and the goods in respect of which the relief or exemption was granted are liable to forfeiture.

(Act 16/2008 s. 1)

(2) Any goods relieved or exempted from duty shall, upon demand made by an officer, be produced or otherwise accounted for to him, and if any person fails to produce or account for such goods, he and any person knowingly concerned in such failure are guilty of an offence and are liable to a fine of \$20,000 or 3 times the value of the goods, whichever is the greater, or to imprisonment for a term of 2 years or to both and may be arrested, and, if any goods not produced or accounted for are subsequently found, they are liable to forfeiture.

Abatement of duty

72. (1) Subject to subsection (2), where the Comptroller is satisfied in respect of any imported goods that before or upon their importation they have deteriorated or have been damaged, or that they or some of them have been lost or destroyed, and, in the case of lost goods, that they have not entered

or will not enter into home use in Anguilla, the Comptroller shall allow such abatement of the duty chargeable on those goods as in his opinion the amount of the deterioration, damage, loss or destruction bears to the original value of the goods.

(2) Where duty has already been paid on goods in respect of which an abatement would be allowable under subsection (1), no repayment of the amount of the abatement shall be made unless the claim is made within 6 months of the date of the payment of the duty.

Goods temporarily imported for re-export

73. (1) The Governor in Council may by regulation prescribe, where he is satisfied that goods are imported only temporarily with a view to subsequent re-exportation, that the goods be delivered on importation subject to such conditions and to the payment of such proportion of duty thereon as he may specify in the regulation and may impose different conditions for different classes of goods.

(2) Regulations under subsection (1) may provide for the imposition of a fine for an amount of \$10,000 or 3 times the value of the goods, whichever is the greater, for any contravention of, or failure to comply with, any such regulation, and for the forfeiture of any goods.

Goods imported other than as cargo, stores or baggage

74. Any goods brought or coming into Anguilla by sea otherwise than as cargo, stores or baggage carried in a vessel are liable to the like duty, if any, as would be applicable to those goods if they had been imported as merchandise, and if any question arises as to the origin of the goods they are deemed to be the produce of such country as the Comptroller may on investigation determine.

Relief from duty on re-imported goods locally produced

75. Without prejudice to any other enactment relating to customs, notwithstanding section 70, if it is shown to the satisfaction of the Comptroller that any goods manufactured or produced in Anguilla are re-imported into Anguilla after exportation therefrom and have not undergone any process outside Anguilla since their exportation, the goods may on their re-importation be delivered for home use without payment of duty.

Power to make regulations

76. (1) The Governor in Council may by regulation—

- (a) impose rates of duty for the purposes of section 64;
- (b) exempt goods or classes of goods subject to such conditions, if any, as may be specified; and
- (c) provide for the form of written declaration to be furnished by an importer of goods.

(2) A regulation made under subsection (1)(a) and (b) is not valid—

- (a) unless it implements an item in a budget approved by an Act of the Legislature; or
- (b) until it is approved by resolution of the House of Assembly.

House of Assembly may reduce duty or exempt goods of specified person

77. (1) The House of Assembly may by resolution reduce the duty on any goods, or may exempt from duty any goods, imported into Anguilla by a specified person and may make the reduction or exemption subject to such conditions, including conditions on the importation, use or disposal of the goods, as may be specified in the resolution.

(2) Unless it is therein otherwise provided, any resolution passed under this section shall take effect and come into operation on the day such resolution is passed.

(3) Notwithstanding subsection (1), no resolution under that subsection in relation to goods imported into Anguilla by a person shall be introduced into the House unless a certificate of good standing issued pursuant to the regulations under the Inland Revenue Department Act in relation to that person that has not expired or been cancelled has been produced to the Minister of Finance.

(Act 6/2010, s. 41)

(4) A recital in a resolution to the effect that, before the resolution was introduced into the House, a certificate of good standing that had not expired or been cancelled was produced to the Minister of Finance in relation to the person who imported the specified goods is conclusive evidence for all purposes of the facts set out in the recital.

(Act 6/2010, s. 41)

(5) A resolution under section (1) is a regulation.

Recovery of amounts due

78. Any amount due and payable to the Comptroller under any enactment may be recovered by him in any court of competent jurisdiction.

Valuation of goods for purpose of *ad valorem* duties

~~79.—(1) For the purpose of any enactment for the time being in force whereunder a duty of customs is chargeable on imported goods by reference to their value, the value of any such goods shall be taken to be the normal price, that is to say, the price that they would fetch at the time when they are entered for home use (or, if they are not so entered, the time of importation) on a sale in the open market between a buyer in Anguilla and a seller in the country from which the goods were despatched to him, such buyer and seller being independent of each other and duty shall be paid on that value, but, in the case of goods imported under a contract of sale and entered for home use, duty is deemed to have been paid on that value if, before the goods are delivered for home use, duty is tendered and accepted on a declared value based on the contract price.~~

~~(2) For the purpose of the exception in subsection (1)—~~

~~(a) the declared value of any goods is their value as declared by or on behalf of the importer in making entry of the goods for home use; and~~

~~(b) that value shall be deemed to be based on the contract price if, but only if, it represents that price properly adjusted to take account of circumstances differentiating the contract from such a contract as is contemplated by subsection (3).~~

~~(3) The normal price of any goods shall be determined on the assumptions that —~~

- ~~(a) the normal price of any such goods shall be taken to be the landed cost of the goods, which shall be the aggregate of —~~
 - ~~(i) the contract price of the goods or the normal price of the goods as defined in subsection (1), whichever is the greater; and~~
 - ~~(ii) the freight, insurance and all other costs, charges and expenses incidental to the sale of the goods and to the removal or carriage from the place of despatch to Anguilla; and~~
- ~~(b) the buyer will pay the duty or tax in Anguilla.~~

~~(4) For the purpose of determining the price of goods under subsection (3) which are uninsured, there shall be substituted for the cost of insurance a notional insurance cost equal to 1% of the f.o.b. cost of such goods and, where the cost of freight is not known or is unsatisfactory in the opinion of the Comptroller, the Comptroller shall determine the cost of freight on the basis of known reliable costs on similar or identical goods carried on an equivalent or identical voyage.~~

~~(5) A sale in the open market between buyer and seller independent of each other presupposes that —~~

- ~~(a) the price is the sole consideration;~~
- ~~(b) the price made is not influenced by any commercial, financial or other relationship, whether by contract or otherwise, between the seller or any person associated in business with him and the buyer and any person associated with him (other than the relationship created by the sale of the goods in question); and~~
- ~~(c) no part of the proceeds of the subsequent resale, use or disposal of the goods will accrue either directly or indirectly to the seller or any person associated in business with him.~~

~~(6) Where the goods to be valued —~~

- ~~(a) are manufactured in accordance with any patented invention or are goods to which any registered design has been applied; or~~
- ~~(b) are imported under a foreign trademark or are imported for sale (whether or not after further manufacture) under a foreign trademark;~~

~~the normal price shall be determined on the assumption that the price covers the right to use the patent, design or trademark in respect of the goods.~~

~~(7) For the purpose of subsection (6), the expression “trademark” includes a trade name and a get-up, and a foreign trademark is a trademark indicating that the goods in relation to which it is used are those of a person —~~

- ~~(a) by whom the goods to be valued have been grown, produced, manufactured, selected, offered for sale or otherwise dealt with outside Anguilla;~~

~~(b) associated in business with any such person as is referred to in paragraph (a); or~~

~~(c) to whom any such person as is mentioned in paragraph (a) or (b) has assigned the goodwill of the business in connection with which the trademark is used.~~

~~(8) Two persons shall be deemed to be associated in business with one another if, whether directly or indirectly, either of them has any interest in the business or property of the other, or both have a common interest in any business or property, or some third person has an interest in the business or property of both of them.~~

~~(9) The Comptroller or an officer may require any importer or other person concerned with the importation of goods to furnish in such form as he may direct —~~

~~(a) such information as is in his opinion necessary for a proper valuation of the goods; and~~

~~(b) such declarations and evidence in support of such declarations relating to the goods as he may think fit;~~

~~and to produce any books of account or other documents of whatever nature relating to the purchase, importation or sale of the goods by that person.~~

~~(10) Where the information, declarations, evidence or documents furnished by the importer or other person concerned in the importation of the goods is not satisfactory in the opinion of the Comptroller, he shall make a determination of the value of the goods based on subsections (1) to (6).~~

~~(11) If any person contravenes or fails to comply with any requirement or direction of the Comptroller under this section, he is guilty of an offence and is liable on conviction to a penalty of \$5,000.~~

Personal and household effects; limit of exemption

80. Notwithstanding anything in this Act, if any person sells, exchanges, gives away or applies to any other use any household goods or personal effects imported as such under items 4 and 11 of the exemption in the ICT and thereby entered free of duty, there shall be levied upon such goods or effects, and such person shall pay duty at the rates applicable thereto as specified in the ICT on the values or quantities thereof—

(a) at the date of importation if the goods or effects are sold, exchanged, given away or disposed of within 6 months from the date of importation; or

(b) at the date of sale, exchange, gift or disposal of the goods or effects if that date is more than 6 months and less than 2 years after the date of importation, but no duty shall be charged on such goods imported not less than 2 years before the date of sale.

Motor vehicles; limit of exemption

81. (1) Notwithstanding anything in this Act, if any motor vehicle imported free of duty under any exemption by any person is sold, exchanged, given away or applied to any use not sanctioned by the exemption, such person shall—

(a) if the motor is sold, exchanged, given away or applied to unsanctioned use within 6 months of the date of importation, pay duty on the value of and at the rate of duty specified in the ICT either at the date of importation or the date of sale, whichever is the greater; or

(b) if the motor vehicle is sold, exchanged, given away or applied to unsanctioned use 6 months or more after the date of importation pay duty on the value of and at the rate of duty specified in the ICT on the date of sale.

(Act 15/2010, s. 18(a))

(2) The duty referred to in subsection (1) shall be chargeable at the time the motor vehicle is sold, exchanged, given away or applied to unsanctioned use.

(Act 15/2010, s. 18(b))

Processed re-imports

82. Notwithstanding anything in this Act, the owner of any class of goods exported from Anguilla for the purpose of being repaired, restored or otherwise processed and thereafter re-imported may at the time of entering such goods for export declare the purpose of such export and, if such goods are subsequently re-imported in repaired, restored or processed form, but without there being any substantial change in their form or character, then duty shall be charged as if the increase in value of the goods attributable to the process were the whole value thereof.

VALUE OF GOODS FOR CUSTOMS PURPOSES

Customs value of imported goods for purposes of *ad valorem* duties

82-A. (1) The customs value of imported goods shall be determined in accordance with this Act and the Regulations.

(2) A person shall, upon making an entry, specify the customs value of the goods.

(3) The currency exchange rate in effect on the date of submission of the entry shall be applied in determining the customs value of goods, unless otherwise provided by the Regulations.

Transaction Value of Imported Goods

82-B. (1) The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to Anguilla, adjusted in accordance with the provisions of section 82-C, provided:

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions that:

(i) are imposed or required by law or by the public authorities in Anguilla;

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of article 82-C; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraph (2).

(2) (a) In determining whether the transaction value is acceptable for the purposes of sub-paragraph (1), the fact that the buyer and the seller are related within the meaning of section -I shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and the importer shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.

(b) In a sale between related persons, the transaction value shall be accepted, and the goods valued in accordance with the provisions of sub-section 1 whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:

(i) the transaction value in sales to unrelated buyers of identical or similar goods for export to Anguilla;

(ii) the customs value of identical or similar goods as determined under the provisions of section 82-G;

(iii) the customs value of identical or similar goods as determined under the provisions of section 82-H;

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in section -C and costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

(c) The tests set forth in subsection 2(b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of subsection 2(b).

Additions to the price actually paid or payable

82-C. (1) In determining the customs value under the provisions of section 82-B, there shall be added to the price actually paid or payable for the imported goods:

(a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:

(i) commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;

(iii) the cost of packing whether for labor or materials;

(b) the value, apportioned as appropriate, of the following goods and services were supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:

(i) materials, components, parts and similar items incorporated in the imported goods;

- (ii) tools, dies, molds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, artwork, design work, plans and sketches, undertaken elsewhere than in Anguilla and necessary for the production of the imported goods;
 - (c) royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
 - (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.
 - (e) the cost of transport of the imported goods to the port or place of importation;
 - (f) loading, unloading, and handling charges associated with the transport of the imported goods to the port or place of importation; and
 - (g) the cost of insurance.
- (2) Additions to the price actually paid or payable shall be made under this section only on the basis of objective and quantifiable information.
- (3) No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Section.

Transaction value of identical goods

82-D. (1) (a) If the customs value of the imported goods cannot be determined under the provisions of section 82-B, the customs value shall be the transaction value of identical goods sold for export to Anguilla and exported at or about the same time as the goods being valued.

(b) In applying this section, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made based on demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

(2) Where the costs and charges referred to in subsection 2 of section 82-C are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.

(3) If, in applying this section, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Transaction value of similar goods

82-E (1)(a) If the customs value of the imported goods cannot be determined under the provisions of Sections 82-B and 82-D, the customs value shall be the transaction value of similar goods sold for export to Anguilla and exported at or about the same time as the goods being valued.

(b) In applying this Section, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

(2) Where the costs and charges referred to in subsection 2 of section 82-C are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

(3) If, in applying this Section, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Order of application of Deductive value and Computed value methods

82-F If the customs value of the imported goods cannot be determined under the provisions of sections 82-B, 82-D and 82-E, the customs value shall be determined under the provisions of section -G or, when the customs value cannot be determined under that Section, under the provisions of section 82-H except that, at the request of the importer, the order of application of section 82-G and 82-H shall be reversed.

Deductive value

82-G (1)(a) If the imported goods or identical or similar imported goods are sold in Anguilla in the condition as imported, the customs value of the imported goods under the provisions of this Section shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:

(i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in Anguilla of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within Anguilla;

(iii) the customs duties and other national taxes payable in Anguilla by reason of the importation or sale of the goods; and

(b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject otherwise to the provisions of subsection 1(a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in Anguilla in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.

(2) If neither the imported goods nor identical nor similar imported goods are sold in Anguilla in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in Anguilla who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in subsection 1(a).

Computed value

82-H (1) The customs value of imported goods under the provisions of this section shall be based on a computed value. Computed value shall consist of the sum of:

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Anguilla;
- (c) the cost or value of all expenses referred to in subsection 2 of section 82-C.

Residual method

82-I (1) If the customs value of the imported goods cannot be determined under the provisions of sections 82-B through 82-H, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of GATT 1994 and on the basis of information available in Anguilla.

(2) No customs value shall be determined under the provisions of this Section on the basis of:

- (a) the selling price in Anguilla of goods produced in such country;
 - (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
 - (c) the price of goods on the domestic market of the country of exportation;
 - (d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of section 82-H;
 - (e) the price of the goods for export to a country other than Anguilla;
 - (f) minimum customs values; or
 - (g) arbitrary or fictitious values.
- (3) If the importer so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Section and the method used to determine such value.

Interpretation

82-J. For purposes of this Section,

“customs value of imported goods” means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;

“country of importation” means country or customs territory of importation; and

“produced” includes grown, manufactured and mined.

“identical goods” means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical;

“similar goods” means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar;

the terms “identical goods” and “similar goods” do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under paragraph 1(b)(iv) of section -C because such elements were undertaken in the country of importation;

goods shall not be regarded as “identical goods” or “similar goods” unless they were produced in the same country as the goods being valued;

goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.

“goods of the same class or kind” means goods which fall within a group or range of goods produced by a particular industry or industry sector and includes identical or similar goods.

(2) For the purposes of this Agreement, persons shall be deemed to be related only if:

- (a) they are officers or directors of one another's businesses;
- (b) they are legally recognized partners in business;
- (c) they are employer and employee;
- (d) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person; or
- (h) they are members of the same family.

(3) Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Agreement if they fall within the criteria of paragraph 4.

Reasons to doubt the truth or accuracy of particulars or documents

82-K. When a declaration has been presented and where the customs administration has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, the customs administration may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of section 82-C. If, after receiving further information, or in the absence of a response, the customs administration still has reasonable doubts about the truth or accuracy of the declared value, it may be deemed that the customs value of the imported goods cannot be determined under the provisions of section 79-B. Before taking a final decision, the customs administration shall communicate to the importer, in writing if requested, its grounds for doubting the truth or accuracy of the particulars

or documents produced and the importer shall be given a reasonable opportunity to respond. When a final decision is made, the customs administration shall communicate to the importer in writing its decision and the grounds therefor.

Value of goods for export

82-L. The customs value of goods for export, shall be the value of the goods at the point of exit and shall be determined by adding to the exporter's ex warehouse price of the product, the cost of transport and all incidental expenses up to the frontier, not including export duties, taxes, fees and charges for which the exporter has been granted a discharge, in accordance with the Regulations.

TARIFF CLASSIFICATION OF GOODS

Tariff classification

82-M. (1) All imported and exported goods must be classified and described to a customs officer in accordance with the provisions the *CARICOM Common External Tariff* using customs tariff nomenclature and the *International Convention on the Harmonized Commodity Description and Coding System*.

(2) For the purposes of applying the Common External tariff and non-tariff measures, goods shall be described and classified in accordance with the Common External Tariff and statistical nomenclature and the International Convention of the Harmonized Commodity Description and Coding System.

General rules of interpretation of the Harmonized System

82-N. Classification of goods in the tariff schedule shall be governed by the following principles:

(1) The table of contents, alphabetical index, and titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions:

(2) (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

(3) When, by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

(4) Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

(5) In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of rule 5(a) above, packing materials and packing containers entered with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes.

ORIGIN OF GOODS

Country of origin of goods and scope of application

82-O. (1) The country of origin of goods is the country in which the goods were produced or manufactured, according to the criteria defined for the purpose of applying the customs tariff, quantitative restrictions, as well as other trade-related measures.

(2) The country of origin of goods shall be determined for the purpose of applying:

- (a) The respective customs tariff rates under applicable regulation;
- (b) Other non-tariff measures established under specific community provisions on trade in goods;
- (c) Other community measures in respect of the origin of goods.

Rules of origin

82-P. Rules of origin are the specific provisions, applied to determine the origin of goods. The rules of origin include non-preferential and preferential rules.

(a) Non preferential rules of origin are established by community regulation, national legislation or international conventions for general application with objective of attaining certain trade policy objectives;

(b) Preferential rules of origin are established by community regulation or in accordance with trade agreements to facilitate community trade with certain countries or member states in the same community space.

Proof of origin

82-Q. (1) Where an origin has been declared in the customs declaration, the customs administration may require the declarant to prove the origin of the goods.

(2) Documentary proof of origin may be required for the application of preferential customs duties, economic or commercial measures adopted unilaterally or in the framework of bilateral or multilateral agreements, public order or health.

(3) Where proof of origin of goods is provided, the customs administration may, in the event of reasonable doubt, require the submission of additional evidence.

Country of consignment of goods

82-R. The country of consignment is the country from where the goods are dispatched directly to Anguilla.

*Drawback***Extent of drawback**

83. (1) Subject to this section, where goods are entered—

- (a) for exportation;
- (b) for shipment for use as stores; or
- (c) for warehousing for subsequent exportation or shipment for use as stores;

drawback may be claimed in respect of such proportion of any duty paid on their importation into Anguilla as the Governor in Council may by regulation specify.

(2) No drawback may be claimed in respect of—

- (a) any goods of a value of less than \$270, such value being that at which the goods were originally imported;
- (b) goods which were imported into Anguilla more than 12 months before the date of the claim for drawback; or
- (c) goods not in the packages and in the same state in which they were originally imported into Anguilla, or in the case of bulk goods, where that bulk has been broken.

(3) Where imported goods are re-exported within 12 months of their importation by their importer to the same country and to the same person or firm from which they were imported or are entered for shipment for use as stores, this section shall not apply.

(4) The Governor in Council may by regulation prescribe any goods, class or description of goods in respect of which no drawback shall be claimable.

Claims for drawback

84. (1) Any claim for drawback shall be made in such form and manner and contain such particulars as the Comptroller may direct.

(2) No drawback is payable—

- (a) unless it is shown to the satisfaction of the Comptroller that all duty due on the goods in respect of which the claim is made has been paid and not otherwise drawn back;
- (b) until the person making the claim has furnished the Comptroller with such information and produced to him such books of account or other documents relating to the goods as the Comptroller may demand; and
- (c) subject to section 70, until all the goods that are the subject of the claim have been exported.

Drawback on goods destroyed or damaged after shipment

85. (1) Where it is proved to the satisfaction of the Comptroller that after being duly shipped for exportation or for use as stores, goods that have been destroyed by accident on board the exporting vessel or aircraft, any amount payable by way of drawback on those goods shall be payable as if they had been exported to their destination.

(2) Where it is proved to the satisfaction of the Comptroller that after being duly shipped for exportation or for use as stores, goods that have been materially damaged by accident on board the exporting vessel or aircraft, those goods may, with the consent of and in accordance with any conditions and restrictions as may be imposed by the Comptroller, be reloaded or unloaded again or brought back into Anguilla, and—

- (a) if re-entered for home use, are liable to the duty due on the importation of such damaged goods; or
- (b) if abandoned to the Comptroller or destroyed, the importer shall be entitled to such drawback payable on those goods as if they had been duly exported to their destination, and notwithstanding any customs enactment, no duty shall be payable on the importation or unloading of those goods.

(3) Any goods in respect of which an offence contrary to subsection (1) is committed are liable to forfeiture, but in the case of a claim for drawback, the Comptroller may, if he sees fit, instead of seizing the goods, either refuse to allow any drawback thereon or allow only such drawback as he considers proper.

(4) Without prejudice to this section, if, in the case of any goods upon which a claim for drawback, allowance, remission or repayment of duty has been made, it is found that those goods do

not correspond with any entry made thereof in connection with that claim, the goods are liable to forfeiture and any person by whom any such entry or claim was made is guilty of an offence and is liable to a fine of \$10,000.

Offences in relation to drawback

86. (1) If any person obtains or attempts to obtain or does anything whereby there might be obtained by any person any amount by way of drawback in respect of goods for which there is no entitlement, he is guilty of an offence and is liable to a fine of \$10,000 or 3 times the value of the goods, whichever is the greater.

(2) If any person, with intent to defraud, obtains or attempts to obtain or does anything whereby there might be obtained by any person any amount by way of drawback in respect of goods for which there is no lawful entitlement, he is guilty of an offence and is liable to a fine of \$20,000 or 3 times the value of goods, whichever is the greater, or to imprisonment for a term of 2 years or to both and may be arrested.

(3) Any goods in respect of which an offence under subsections (1) and (2) has been committed are liable to forfeiture.

Refund of duty paid on goods exported after undergoing process of manufacture

87. (1) If it is shown to the satisfaction of the Comptroller that duty has been paid on goods on importation and that such goods have—

- (a) undergone a process of manufacture; and
- (b) have been exported;

the Comptroller shall, subject to such conditions and restrictions as he sees fit to impose, authorise repayment to the importer upon a claim being made, of an amount equivalent to the duty paid on the importation of the goods.

(2) Any such claim shall be made in such form and manner and contain such particulars as the Comptroller may direct.

Prohibitions and Restrictions

General provisions

88. (1) No goods, class or description of goods prescribed in Part 1 of Schedule 2 shall be imported into Anguilla.

(2) No goods, class or description of goods prescribed in Part 2 of Schedule 2 shall be imported into Anguilla except in accordance with the conditions and restrictions prescribed by that Part.

(3) No goods, class or description of goods prescribed in Part 3 of Schedule 2 shall be exported.

(4) No goods, class or description of goods prescribed in Part 4 of Schedule 2 shall be exported except in accordance with the conditions and restrictions prescribed by that Part.

(5) The Governor in Council may by regulation—

- (a) delete from, vary or add to the goods, classes or description of goods prescribed in Parts 1, 2, 3 or 4 of Schedule 2;
- (b) prohibit or restrict, subject to such conditions and restrictions as the regulations may impose, the importation, exportation or carriage coastwise of any goods, class or description of goods specified in the Order to or from any place in Anguilla so specified.

Duty Free Zones

Duty free zone. Definition

88-A. Duty free zone means any part of the customs territory of Anguilla, where any goods introduced are generally regarded, insofar as import duties and taxes concerned, as being outside this territory.

Establishment of Duty Free Zones

88-B. (1) The customs administration may appoint any place as a duty free zone and determine the area of the zone, its access and exit points.

(2) Duty free zones shall be enclosed and the area and access and exit points of a zone shall be under customs supervision.

(3) Persons, goods and means of transport entering or exiting a duty free zone may be subjected to customs controls.

(4) The customs administration may prohibit persons who do not provide the necessary assurance of compliance with the customs provisions from carrying on an activity in a duty free zone.

Authorized constructions and activities in a Duty Free Zone

88-C. (1) Building construction in a duty free zone shall be subject to the prior approval of the customs administration in accordance with the Regulations.

(2) Subject to this Act and the Regulations any industrial or commercial activity or for the provision of services shall be allowed in a duty free zone. These activities shall be subject to prior notification to the customs administration.

(3) The customs administration may prohibit or restrict activities referred to in paragraph 2, considering the nature of goods in question, of the needs of supervision, security and safety.

(4) The customs administration may stop persons from engaging in a duty free zone activity who do not provide the necessary requirements.

Placement of goods under the regime

88-D. (1) Except as otherwise provided in this Act or the Regulations goods brought into a duty free zone are subject to this Act and the Regulations and may only be exported or re-exported.

(2) Non community goods admitted to a duty free zone may be placed in the inland procedures for clearance.

- (3) Goods admitted to a duty free zone and subsequently exported are entitled to duties relief.
- (4) The modalities for the application and enforcement of these provisions shall be prescribed in the Regulations.

Duty Free Shops. Licenses

88-E. (1) Subject to the Regulations, the customs administration may issue to any person qualified, a license for the operation of any place as a duty free shop for the sale of goods free of certain duties or taxes levied on goods, to persons about to depart from Anguilla for exportation and may specify in the license any restriction as to the classes of goods that may be received therein or the circumstances in which goods may be received.

(2) Subject to the Regulations, the license may be amended, suspended, renewed, cancelled or reinstated.

Procedures required

88-F. (1) Each duty-free shop must establish, maintain, and follow written procedures to provide reasonable assurance to the customs administration that conditionally duty-free merchandise purchased therein will be exported from the customs territory. A copy of any change in the procedure will be provided to the customs administration before it is implemented.

(2) Conditionally duty-free merchandise and other merchandise such as domestic merchandise and merchandise previously entered or withdrawn for consumption and brought into a duty-free shop can be warehoused in a duty-free store, provided

- (a) that they are physically segregated from one another,
- (b) that they are identified or marked to enable the customs administration to distinguish conditionally duty-free merchandise from other merchandise or
- (c) the owner has an electronic inventory system capable of immediately identifying conditionally duty-free merchandise from other merchandise.

(3) Conditionally duty-free merchandise for exportation at airport or seaport exit points may be sold and delivered only to purchasers who display valid tickets, or in the case of chartered or for-hire flights that have not issued tickets, other proof of impending departure from the customs territory, and to crewmembers who have been engaged for a flight or voyage departing directly from the customs territory with no intermediate stops in Anguilla.

(4) Duty-free store proprietors must maintain, at the duty-free store or at another location approved by the customs authorities, a current inventory separately for each storage area, crib, and sales area containing conditionally duty-free merchandise by warehouse entry, or by unique identifier where permitted by the customs authorities. Proprietors must assure that the customs administration has access to those records, and that the records are stored in such a way as to keep transactions of multiple facilities separated. The inventory must be reconcilable with the accounting and inventory records. Proprietors are subject also to the recordkeeping requirements.

(5) The proprietor or operator of a duty free shop shall, where an officer so requests, afford the officer free access to the duty free shop or any premises or place under his control that is attached to or forms part of the duty free shop and open any package or container of goods therein or remove any covering therefrom.

*Post Release Controls***Post-Release Controls**

88-G. (1) The Customs Authority may, after releasing goods and in order to ascertain the accuracy of the particulars contained in the customs declaration,

(a) inspect any documents and data relating to operations in respect of the goods in question or to previous or subsequent commercial operations involving those goods.

(b) examine such goods and/or take samples where it is possible to do so.

(c) conduct investigations and verification into the regularity of clearance operations

(2) The controls may be applied to the declarant, the importer or exporter, the consignee or any person directly or indirectly involved with those operations, as well as any other person in possession of documents and data related to customs clearance of the goods.

(3) Where following post-clearance review, investigation or verification of a declaration, it comes out that the applicable provisions were applied based on incorrect or incomplete information, the customs administration shall take the necessary measures to rectify the situation based on new information.

PART 10

POWERS

Customs control of persons entering or leaving Anguilla

89. (1) Any person entering Anguilla shall at such place and in such manner as the Comptroller with the approval of the Governor in Council may direct, declare anything contained in his baggage or carried with him that—

(a) he has obtained outside of Anguilla; or

(b) being dutiable goods or chargeable goods that he has obtained in Anguilla without payment of duty;

and in respect of which he is not entitled to exemption from duty or tax by virtue of any enactment.

(Act 5/2009, s. 1)

(2) Any person entering or leaving Anguilla shall—

(a) if he is in possession of currency, cheques or monetary instruments, or any combination thereof, of or exceeding \$27,000, or the equivalent in any currency or combination of currencies, declare and make a report of same in such form and manner and containing such particulars as the Comptroller may direct; and

(b) answer such questions as the proper officer may put to him with respect to his baggage and anything contained therein or carried with him, and shall, if required by the proper officer, produce that baggage and any such thing for examination at such place as the Comptroller may direct.

(Act 15/2010, s. 19)

(3) Any person failing to declare any baggage or thing as required under this section is guilty of an offence and is liable to a fine of \$10,000 or 3 times the value of the thing not declared or the baggage or thing not produced, as the case may be, whichever is the greater.

(4) Anything chargeable with any tax that is found concealed or is not declared and anything that is being taken into or out of Anguilla contrary to any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment is liable to forfeiture.

(5) A direction issued under subsection (1) is a regulation.

(Act 5/2009, s. 1)

Offence of waiting in green channel with uncustomed, prohibited or restricted goods

90. (1) In this section—

“green channel” means a channel to which a green channel notice refers;

“green channel notice” means a notice printed in large, legible characters displayed at an airport by order of the Comptroller notifying those persons disembarking there who have no uncustomed or prohibited or restricted goods to declare that they may await their turn to receive permission to leave the customs area in the green channel indicated for that purpose in such notice.

(2) A person disembarking at an airport who takes up the position in a green channel for the purpose of receiving permission to leave the customs area and whose baggage contains or who carries with him any uncustomed or prohibited or restricted goods commits an offence, unless he satisfies the court that he did not know and could not reasonably have been expected to know that he was committing such offence.

(3) Without prejudice to any other penalty or forfeiture imposed by any customs enactment, a person convicted of an offence under this section is liable to a fine of \$200.

Patrol and surveillance.

90-A. (1) Subject to subsection (2), a proper officer may, for the purposes of the detection of offences against this Act or any other customs enactment, at any time and in such manner as the officer considers appropriate, patrol and pass freely along and over any part of Anguilla whether or not that part is private property and may remain in any such part for the purpose of carrying out investigations or surveillance.

(2) This section does not authorise the entry into a dwelling-house without the permission of the occupier.

(3) Any officer proceeding as authorised by subsection (1) shall not be liable to any criminal or civil proceeding for so doing.

Right of access

91. (1) Without prejudice to any other power contained in this Act, any officer has a right of access to, and a power of search of any part of a customs port, approved wharf, customs airport or other customs area and any vehicle or goods found at such a place.

(2) The power of search provided by subsection (1) shall include the power to break into or open any building or container that is locked and to which there is no access.

(3) Any goods found concealed at a customs port, approved wharf, customs airport or other customs area, or in any vehicle found at such a place are liable to forfeiture.

Power of boarding

92. (1) At any time while a vessel is in the territorial sea or an aircraft is at any customs airport or any other place within Anguilla, any officer may require that vessel or aircraft to stop and then may board it, or remain on board it, and may search any part of it.

(2) An officer on board any vessel or aircraft in pursuance of subsection (1) may—

- (a) cause any goods to be marked before they are unloaded from that vessel or aircraft;
- (b) examine any goods in the course of their being unloaded;

- (c) lock up, seal, mark or otherwise secure any goods carried in that vessel or aircraft or any place or container in which they are so carried;
- (d) break open any place or container that is locked and to which there is no access;
- (e) require any document or book that should be on board that vessel or aircraft to be produced to him for examination;
- (f) require answers to all such questions relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as may be put by him; or
- (g) have free access to any part of any vessel or aircraft;

and if any person on board prevents him from so doing, or refuses to produce any such document or book, or answer any such question, he is guilty of an offence and is liable to a fine of \$10,000.

(3) Any goods found concealed on board a vessel within the territorial sea or an aircraft at any customs airport or any other place within Anguilla are liable to forfeiture.

(4) Where any vessel or aircraft refuses to stop or permit an officer to board when required to do so under subsection (1), the master of that vessel or the commander of that aircraft is guilty of an offence and is liable to a fine of \$20,000 or to imprisonment for a term of 2 years or to both and may be arrested and the vessel or aircraft is liable to forfeiture.

Power to station officer on vessel

93. The Comptroller may station an officer on board any vessel at any time while it is within the territorial sea and if the master of any vessel on which an officer is stationed neglects or refuses to provide—

- (a) proper and sufficient food and water, together with reasonable accommodation for such an officer; and
- (b) means of safe access to and egress from that vessel as required by the officer;

he is guilty of an offence and is liable to a fine of \$10,000.

Power to patrol and moor

94. (1) In relation to any assigned matter, any officer may patrol upon and pass freely either on foot or otherwise along and over and enter any part of Anguilla and any such officer so proceeding is not liable to any prosecution or any other action for so doing.

(2) Any officer, in command or in charge of any vessel, vehicle or aircraft engaged in the prevention of smuggling may haul up and moor that vessel or land that aircraft or park that vehicle any place in Anguilla.

Power to examine and take account of goods

95. (1) Without prejudice to any other power conferred by any customs enactment, an officer may examine and take account of any goods—

- (a) that have been imported;

- (b) that are in a warehouse or a customs warehouse;
- (c) that have been loaded into or unloaded from any vessel or aircraft at any place in Anguilla;
- (d) that have been entered for exportation or for use as stores;
- (e) that have been brought to any place in Anguilla for exportation or for use as stores, or for shipment; or
- (f) in respect of which any claim for drawback, allowance, rebate, remission or repayment of duty has been made;

and may for that purpose require any container to be opened or unpacked.

(2) Any examination of goods by an officer under subsection (1) shall be made at such time and place as the officer may direct.

(3) Any bringing of goods to a place directed under subsection (2), and their unloading, opening, unpacking, weighing, repacking, bulking, sorting, lotting, marking, numbering, loading, carrying or landing, and any such treatment to the containers in which the goods are kept for the purposes of and incidental to the examination or for use as stores or warehousing, shall be done, and any facilities or assistance required for such examination shall be provided by, or at the expense of, the owner of the goods.

(4) If any—

- (a) imported goods that an officer has the power under this Act to examine; and
- (b) goods, other than imported goods, that an officer has directed to be brought to a place for the purposes of examination;

are without the authority of the proper officer removed from the charge of customs before they have been examined, those goods are liable to forfeiture.

Accounting for goods.

95-A. (1) The [Comptroller] may, by notice in writing, require the person who is authorized to operate a customs controlled area to —

- (a) account for goods that the [Comptroller] believes have been entered into that customs controlled area; and
- (b) produce any documents books and or records, whether in electronic form or otherwise relating to the movement of goods into or out of that customs controlled area.

(2) A person who fails or refuses to comply with subsection (1) commits a non-prosecutable breach.

Production of goods.

95-B (1) A proper officer may require the person who is authorized to operate a customs controlled area to produce to the officer goods that, according to any record, are within that area.

(2) A person who fails or refuses to produce or account for any goods when required to do so under this section commits a non-prosecutable breach.

Power to require provision of facilities, etc.

96. (1) Any person required by the Comptroller under this Act to give security in respect of any premises shall—

- (a) provide and maintain such appliances and afford such other facilities reasonably necessary to enable an officer to take any account or make any examination or search or to perform any other of his duties on the premises of that trader or at the bonded premises or place as the Comptroller may direct;
- (b) keep any appliances so provided in a convenient place approved by the proper officer for that purpose; and
- (c) allow the proper officer at any time to use anything so provided and give him any assistance necessary for the performance of his duties;

and any person who contravenes or fails to comply with this subsection is guilty of an offence and is liable to a fine of \$10,000.

(2) Any such person as aforesaid shall provide and maintain any fitting required for the purpose of affixing any lock that the proper officer may require to be affixed to the premises of that trader or person, or any part thereof, or to any utensil or other apparatus whatsoever kept thereon, and in default—

- (a) the fitting may be provided or any work necessary for its maintenance may be carried out by the proper officer, or on his behalf, and any expenses so incurred shall be paid on demand by the trader or person aforesaid; and
- (b) if the trader or person aforesaid fails to pay those expenses on demand, he is in addition guilty of an offence and is liable to a fine of \$10,000.

(3) If any person aforesaid or any person on his behalf—

- (a) wilfully destroys or damages any such fitting as aforesaid or any lock or key provided for use therewith, or any label or seal placed on any such lock;
- (b) improperly obtains access to any place or article secured by any such lock; or
- (c) has any such fitting or any article intended to be secured by means thereof so constructed that that intention is defeated;

he is guilty of an offence and is liable on conviction to a fine of \$10,000.

Power to take samples

97. (1) An officer may at any time take a sample of any goods that he is empowered by any customs enactment to examine.

(2) Any sample taken by an officer under subsection (1) shall be disposed of and accounted for in such manner as the Comptroller may direct.

Power to search premises

98. (1) Where an officer has reasonable grounds to believe that anything that is liable to forfeiture by virtue of any customs enactment is kept at or concealed in any building or other place or any offence has been committed under or by virtue of any customs enactment, he may after being authorised by the Comptroller in writing so to do—

- (a) enter that building or place at any time, whether by day or night, on any day and search for, seize and detain or remove any such thing;
- (b) so far as is reasonably necessary for the purpose of such entry, search, seizure, detention or removal, break open any door, window or container and force or remove any other impediment or obstruction; and
- (c) search for and remove any books, papers, invoices, bills of lading, electronic or mechanical records or any other documents or books relating to any assigned matter.

(2) No search shall be made at night unless accompanied by police officers.

(3) Without prejudice to the powers conferred by subsection (1) or to any other power conferred by this Act, if the Magistrate is satisfied by information upon oath given by an officer that there are reasonable grounds to suspect that anything liable to forfeiture under or by virtue of any customs enactment is kept or concealed in any building or place, he may, by warrant under his hand given on any day, authorize that officer or any other person named in the warrant to enter, with or without the assistance of a police officer, and search any building or place so named.

(4) Where in the case of any entry, search, seizure, detention or removal, damage is caused and no goods that are liable to forfeiture are found, the owner of the building, place or goods damaged is entitled to recover from the Comptroller the costs of making good that damage.

Power to search vehicles

99. (1) Without prejudice to any other power contained in or under this Act, where an officer has reasonable grounds to believe that any vehicle is carrying anything that is liable to forfeiture, he may stop and search that vehicle.

(2) If, when so required under subsection (1), the person in charge of the vehicle fails to stop or refuses to permit the vehicle to be searched, he is guilty of an offence and is liable to a fine of \$10,000.

Power to search persons

100. (1) Where an officer has reasonable grounds to believe that any person has in his possession anything that is liable to forfeiture, he may stop and search that person and any article that that person has with him.

(2) No person shall be searched in pursuance of subsection (1) except by a person of the same sex.

(3) Any person to be searched in pursuance of subsection (1) may require to be taken before the Magistrate or to a superior of that officer, who shall consider the grounds for suspicion and direct whether or not the search is to take place.

Procedures to search persons.

100-A. (1) Where a search of persons is to be conducted under this Act —

(a) a female shall not be searched except by a female and a male shall not be searched except by a male;
and

(b) a minor, whether male or female, shall not be searched except with the presence of his parent or guardian.

(2) Before a person is searched he must be informed that he may request to be taken with all reasonable dispatch before the superior officer on duty for a review of the need for the search.

(3) Where a person is detained under this Act to be searched and there is no suitable person to conduct the search available at the place where the search is to take place, the person detained may be taken to another place to be searched.

(4) A proper officer shall not be liable to any prosecution or action at law based on any search made in accordance with this section.

- (5) All intimate searches shall be conducted by a medical practitioner.

Preliminary search of persons by use of aids.

100-B.(1) A proper officer may conduct a preliminary search of a person to whom section 142 applies, and may detain that person for the purposes of conducting that preliminary search.

- (2) A preliminary search is a search that —

- (a) involves little or no physical contact between the person conducting the search and the person being searched; and
- (b) is conducted by using an aid, including a dog, a chemical substance, or x-ray or imaging equipment, or some other mechanical, electrical, or electronic device or other similar aid, but not by any more invasive means.

Searching of persons if reasonable cause to suspect items concealed.

100-C. (1) A proper officer may cause any person described in subsection (2) to be searched if the officer has reasonable grounds to believe that the person has concealed on or about his person—

- (a) any dutiable, uncustomed or prohibited goods, or goods liable to forfeiture;
 - (b) evidence relating to any goods referred to in sub-paragraph (a); or
 - (c) any article that is or might be evidence of the contravention or possible contravention of this Act.
- (2) The person referred to in subsection (1) is a person who—
- (a) is in a customs controlled area;
 - (b) has, within the preceding [24 hours], arrived in [country] at a place other than a customs place; or
 - (c) is about to depart from [country] from any place other than a customs place.
- (3) Reasonable force may be used if it is necessary to detain or search any person covered by this section.
- (4) A proper officer who searches a person under this section may require any person that the officer thinks necessary to assist him.
- (5) A search of a person may be conducted under this section whether or not that person has earlier been the subject of a preliminary search under section 145.

Searching of persons for dangerous items.

100-D. (1) A customs officer or police officer may immediately detain and search a person if the officer has reasonable grounds to believe that —

- (a) the person has a dangerous item on or about his person; and
 - (b) the item poses a threat to the safety of the officer or any other person.
- (2) For the purposes of this section, “dangerous item” means—
- (a) any firearm or ammunition as defined in [XX]; or
 - (b) any substance or device that could be used to endanger a person’s safety.
- (3) A customs officer or police officer who undertakes a search under this section shall, within [3 working days] of the search, give a written report to the [Comptroller] of the search, the circumstances in which it was conducted, and the matters that gave rise to the reasonable belief that the person had a dangerous item on or about his person.

Seizure of items found.

100-E. (1) A proper officer may seize any article found when carrying out a search under section 147 that the officer has reasonable grounds to believe is an item referred to in that section.

(2) An officer may seize any article found on or about a person when carrying out a search under section [x] that the officer has reasonable grounds to believe is an item referred to in that section.

Questioning of persons in a customs controlled area.

100-F. A proper officer may question any person who is found in a customs controlled area.

Power of arrest

101. (1) Subject to subsection (2), any officer or a police officer may arrest any person who has committed, or whom there are reasonable grounds to suspect of having committed, any offence for which he is liable to be arrested under any customs enactment.

(2) No person may be arrested for an offence by virtue of subsection (1) more than 5 years after the commission of that offence except that, where, for any reason it was not practicable to arrest that person at the time of the commission of the offence, he may be arrested and proceeded against as if the offence had been committed at the time when he was arrested.

(3) Where by virtue of subsection (1) any person is arrested by a police officer, that police officer shall give notice of that arrest to the Comptroller.

Power to carry and use firearms

102. If the Governor in Council is satisfied on representation made by the Comptroller that it is necessary for the protection of any officer duly engaged in the performance of any duty that he should carry firearms, he may grant permission to the Comptroller of Customs to apply to the Commissioner of Police for the issue of a licence to such officer to carry firearms.

Power to summon vessels to bring to

103. (1) If any part of the cargo of a vessel is thrown overboard or is staved or destroyed to prevent seizure—

- (a) while the vessel is within the territorial sea; or
- (b) where the vessel, having been properly summoned to bring to by any vessel in the service of the Government of Anguilla, fails so to do and chase is given, at any time during the chase;

the vessel is liable to forfeiture.

(2) If, save for just and sufficient cause, any vessel that is liable to forfeiture or examination under or by virtue of this Act does not bring to when summoned to do so, the master of the vessel is guilty of an offence and is liable to a fine of \$20,000 or to imprisonment for a term of 2 years or to both and may be arrested.

(3) Where any vessel liable to forfeiture or examination as aforesaid has failed to bring to when summoned to do so and chase has been given thereto by any vessel in the service of the Government of Anguilla, and after the commander of that vessel has caused a gun to be fired as a signal and the vessel still fails to bring to, the vessel may be fired upon.

(4) For the purposes of this section, a vessel is deemed to have been properly summoned to bring to—

- (a) if the vessel making the summons did so by means of an international signal code or any other recognised means and while flying her proper ensign; and
- (b) if at the time the summons was made the vessel was within the territorial sea.

Power to pay rewards

104. The Comptroller may, with the approval of the Governor, reward any person, including an officer, for any service in relation to an assigned matter that appears to him to merit reward.

Power to require attendance

105. (1) Where under any customs enactment the master of any vessel or the commander of any aircraft is required to answer any questions put to him by the Comptroller or an officer, the Comptroller or the officer may, at any time while the vessel is at any port or the aircraft is at any customs airport, require the master or commander or, with the consent of the Comptroller or the officer, a senior officer of that vessel or aircraft, to attend before him at his office.

(2) Any master or commander who fails to comply with subsection (1) is guilty of an offence and is liable to a fine of \$10,000.

Power to require copies of documents.

105-A. Where a person is required to submit a report, entry, or other form for the purpose of any customs enactment, the Comptroller may require that person to submit as many copies thereof as he may deem necessary.

Search warrants.

105-B. (1) A magistrate may issue a search warrant if he is satisfied, on an application by a proper officer in writing made on oath, that there are reasonable grounds to believe that there is, in or on any place or article—

- (a) anything that there are reasonable grounds to believe may be evidence of the commission of an offence against this Act or the unlawful exportation or importation of goods;
- (b) anything that there are reasonable grounds to believe is intended to be used for the purpose of committing an offence against this Act or unlawfully exporting or importing goods; or
- (c) anything that is liable to seizure under this Act.

(2) The proper officer, before applying for a warrant, shall make reasonable enquiries and shall disclose on the application details of any other applications that the officer knows have been made within the previous [20 working days] in respect of the place or article specified, including the offence or offences alleged in any other application and the result of any other application or applications.

(3) Every search warrant shall be —

- (a) directed to and executed by a designated proper officer; or
- (b) directed to customs officers generally and executed by any customs officer or officers.

(4) A warrant may be issued subject to such reasonable conditions as may be specified in the warrant.

Entry and search under warrant.

105-C. (1) In executing a warrant, a proper officer or a police officer may, in addition to searching the place specified in the warrant, search or detain a person who is at the place while the warrant is being executed and who the officer believes is connected to the matter referred to in the warrant.

(2) A proper officer or a police officer shall not detain a person under subsection (1) for a period of time exceeding [48 hours].

(3) A proper officer or a police officer may, without warrant, arrest a person who refuses to be searched or detained under subsection (1).

(4) In executing a warrant referred to in subsection (1) a proper officer or a police officer may seize any item found in the place being searched or on the person being searched if the customs officer or police officer has reasonable cause to believe that the item is referred to in the warrant.

(5) A person called upon to assist the proper officer or a police officer in executing the warrant, has, for that purpose, the powers referred to in this section.

(6) A person who fails or refuses to comply with a search or detention under this section commits a non-prosecutable breach.

Execution of search warrant.

105-D. (1) A proper officer executing a search warrant shall produce it for inspection upon initial entry into a place and in response to any reasonable request thereafter and, when requested by or on behalf of the owner or the person occupying the premises, shall provide a copy of the warrant no later than [7 days] after the request is made.

(2) The person executing the warrant shall inform the owner or person occupying the premises of the date and time of the execution of the warrant and the name of the officer in charge of the search —

- (a) by delivering to the owner or person occupying the premises a written notice containing the information;
- (b) by leaving a notice in a prominent position at the place searched or attached to the article searched;
- (c) by sending a notice to the owner or person occupying the premises by registered mail; or
- (d) in such other manner as the court may direct in any particular case.

Use of aids by customs officer.

105-E. (1) In exercising any power under this Act to board a conveyance, enter a building or search any premises, a proper officer or a police officer may bring with him and use as an aid in exercising those powers a dog, a chemical substance, x-ray or imaging equipment, or some other mechanical, electrical, or electronic device.

(2) This section does not apply to a search carried out on residential premises except under a warrant issued under section [x].

Conditions applying to entry of buildings.

105-F. Every provision of this Act that confers on a customs officer the power to enter any building without the authority of a warrant [or writ of assistance] is subject to—

- (a) reasonable notice of the intention to enter being given, except where it would frustrate the purpose of the entry;
- (b) entry being made at a time that is reasonable, taking into account the circumstances so as to avoid frustrating the purpose of the entry;
- (c) identification being produced on initial entry and, if requested, at any subsequent time; and
- (d) the authority for the entry and the purpose of the entry being clearly stated to the owner or person occupying the building, if present.

Detention of dangerous goods.

105-G. (1) A customs officer may detain goods found in the course of exercising any power of search or examination concerning aircraft if the officer has a reasonable belief that the goods —

- (a) are dangerous goods that may not be lawfully carried on an aircraft; and
 - (b) are proposed to be carried by an operator of an aircraft.
- (2) Where a customs officer detains goods under subsection (1), he shall, as soon as practicable, deliver those goods into the custody of the Police Force of Anguilla.
- (3) Where goods have been delivered under subsection (2), responsibility for those goods passes from the [Comptroller] to the Police Force of Anguilla.

Protection of persons acting under authority of Act.

105-H. (1) A proper officer, a police officer, a member of the Armed Forces, or a person assisting one of the above, shall not be liable for the loss of or damage to any document, goods or conveyance caused by the action or inaction of that person lawfully exercising any power conferred under this Act.

(2) Subsection (1) does not apply where the person in question has not a

Power to require information and the production of evidence

106. (1) Any officer may, at any time within 5 years of the importation, exportation or carriage coastwise of any goods, require any importer, exporter or other person concerned in that importation, exportation or carriage coastwise or in the carriage, unloading, landing or loading of such goods—

- (a) to furnish to him in such form and manner as he may require any information relating to the goods;
- (b) to give access to any computer for the purposes of verification and audit; and
- (c) to produce and permit the officer to inspect, take extracts from, make copies of or remove for a reasonable period, any invoice, bill of lading, electronic or mechanical record or other book or document relating to the goods.

(Act 15/2010, s. 20(a))

(2) The Comptroller may require evidence to be produced to his satisfaction in support of any information provided by virtue of subsection (1) or Parts 3 to 7 and 9, in respect of any goods imported, exported or carried coastwise, or in respect of which any repayment of duty is claimed.

(3) Any person who—

- (a) tampers with any information, computer, document or evidence required under subsection (1) or (2) prior to its production, access or inspection; or
- (b) without reasonable cause, fails to comply with a requirement imposed on him under subsection (1) or (2);

is guilty of an offence and is liable to a fine of \$10,000.

(Act 15/2010, s. 20(b))

Power to require security

107. (1) Without prejudice to any express requirement as to security provided for by any other customs enactment, the Comptroller may, if he sees fit, require any person to give security by bond or otherwise in such form and manner as the Comptroller may direct for the observance of any condition or restriction in connection with any assigned matter.

(2) Any bond taken for the purpose of any assigned matter—

- (a) shall be taken on behalf of the Government of Anguilla;
- (b) shall be valid notwithstanding that it is entered into by a person who has not attained the age of majority; and
- (c) may be cancelled at any time by or by the order of the Comptroller.

PART 11
OFFENCES

False statements, evasion of duties

107-A. No person shall

- (a) make, or participate in, assent to or acquiesce in the making of, false or deceptive statements in a statement or answer made orally, in writing or electronically pursuant to this Act or the Regulations
- (b) make, or participate in, assent to or acquiesce in the making of, false or deceptive statements in an application for an advance ruling;
- (c) to a void compliance with this Act or the Regulations,
 - (i) destroy, alter, mutilate, secrete or dispose of records or books of account,
 - (ii) make, or participate in, assent to or acquiesce in the making of, false or deceptive entries in records or books of account, or
 - (iii) omit, or participate in, assent to or acquiesce in the omission of, a material particular from records or books of account; or
- (d) wilfully, in any manner, evade or attempt to evade compliance with any provision of this Act or the Regulations, or evade or attempt to evade the payment of duties under this Act.

Hindering an officer

107-B. No person shall, physically or otherwise, do or attempt to

- (a) interfere with a customs officer doing anything that the officer is authorized to do under this Act or the Regulations; or
- (b) hinder or prevent a customs officer from doing anything that the officer is authorized to do under this Act or the Regulations.

Misdescription of goods in accounting documents

107-C. No person shall include in any document used for the purpose of a declaration or payment of duties a description of goods that does not correspond with the goods so described.

Keeping, acquiring, disposing of goods illegally imported

107-D. No person shall, without lawful authority or excuse, the proof of which lies on him, have in his possession, purchase, sell, exchange or otherwise acquire or dispose of any imported goods in respect of which the provisions of this Act or the Regulations apply.

Officers, etc., of corporations

107-F. Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

Smuggling

107-G. (1) Every person commits an offence who smuggles or attempts to smuggle into Anguilla, whether clandestinely or not, any goods that are subject to duties, or any goods the importation of which is prohibited, controlled or regulated under this Act or the Regulations.

(2) Every person commits an offence who smuggles or attempts to smuggle out of Anguilla, whether clandestinely or not, any goods that are subject to duties, or any goods the exportation of which is prohibited, controlled or regulated under this Act or the Regulations.

(3) Every person who contravenes a section in this Part

(a) guilty of an offence punishable on summary conviction and liable to a fine of not more than \$x or to imprisonment for a term not exceeding x months or to both that fine and that imprisonment; or

(b) is guilty of an indictable offence and liable to a fine of not more than \$x or to imprisonment for a term not exceeding x years or to both that fine and that imprisonment.

Where an offence is committed under this Part by a person who

is armed with a weapon at the time of the offence; or

behaves in a violent manner

guilty of an offence punishable by indictment and liable to a fine of not more than \$x or to imprisonment for a term not exceeding x years or to both fine and imprisonment.

Unlawful assumption of character of Comptroller or officer

108. If, for the purpose of obtaining admission to any aircraft, vessel or building or other place, or of doing or procuring to be done any act that he would not be entitled to do or procure to be done of his own authority, or for other unlawful purpose, any person falsely assumes the name, designation or character of the Comptroller or an officer or of any other person appointed by the Comptroller to discharge any duty relating to an assigned matter, he may be arrested and, in addition to any other proceedings that may be taken against him, he is guilty of an offence and is liable to a fine of \$20,000 or to imprisonment for a term of 2 years or to both.

Bribery and collusion

109. (1) If the Comptroller, an officer or any other person appointed by the Comptroller to discharge any duty relating to an assigned matter—

(a) directly or indirectly asks for or takes in connection with any of his duties any payment or other reward whatsoever, whether pecuniary or other, or any promise or security for any such payment or reward not being a payment or reward that he is lawfully entitled to receive; or

(b) enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing whereby the Government of Anguilla is or may be defrauded or that is otherwise unlawful, being an act or thing relating to an assigned matter;

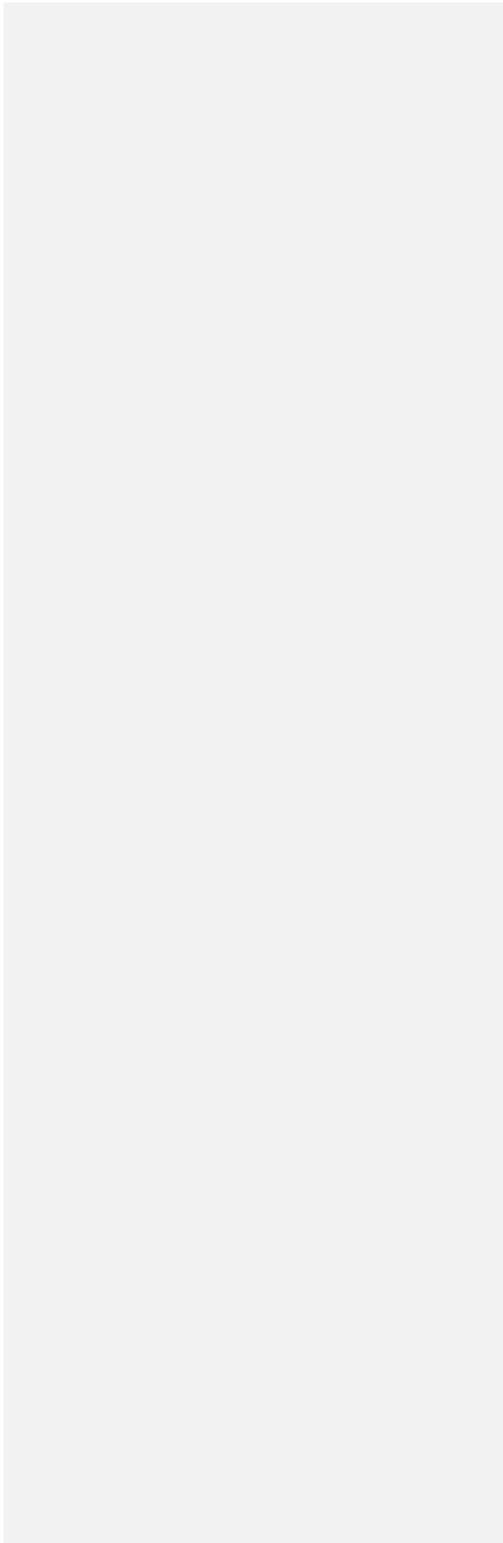
he is guilty of an offence and is liable to a fine of \$20,000 or to imprisonment for a term of 2 years or to both and may be arrested.

(2) If any person—

(a) directly or indirectly offers or gives to the Comptroller, to an officer or to any other person appointed by the Comptroller to discharge any duty relating to an assigned matter, any payment or other reward whatsoever, whether pecuniary or other, or any promise or security for any such payment or reward; or

- (b) proposes or enters into any agreement with the Comptroller, officer or other person so appointed;

in order to induce him to do, abstain from doing, permit, conceal or connive at any act or thing whereby the Government of Anguilla is or may be defrauded or that is otherwise unlawful, being an act or thing relating to an assigned matter, or otherwise to take any course contrary to his duty, he is guilty of an offence and is liable to a fine of \$20,000 or to imprisonment for a term of 2 years or to both and may be arrested.



Offences against officers

- 110.** (1) Any person who—
- (a) obstructs, hinders, molests or assaults any person engaged in the performance of any duty or the exercise of any power imposed or conferred on him by any customs enactment, or any person acting in his aid;
 - (b) does anything that impedes or is calculated to impede the carrying out of any search for anything liable to forfeiture or the detention, seizure or removal of any such thing;
 - (c) rescues, damages or destroys anything liable to forfeiture or does anything calculated to prevent the procuring or giving of evidence as to whether or not anything is so liable to forfeiture;
 - (d) prevents the arrest of any person under any customs enactment or rescues any person so arrested; or
 - (e) who attempts to do any such act, specified in paragraphs (a), (b), (c) or (d) or aids and abets any person doing such an act;

is guilty of an offence and is liable to a fine of \$20,000 or to imprisonment for a term of 2 years or to both and may be arrested.

(2) In addition to any other penalty that may be imposed under or by virtue of any enactment, any person who fires upon, maims or wounds any officer in the performance of his duty is guilty of an offence and is liable to a fine of \$100,000 or to imprisonment for a term of 10 years or to both and may be arrested.

(3) If any person uses abusive, offensive or threatening language or behaviour to any officer engaged in the performance of any duty or the exercise of any power imposed or conferred upon him by any customs enactment, he is guilty of an offence and is liable to a fine of \$20,000 or to imprisonment for a term of 2 years or to both, and may be arrested.

Carrying away officers

111. (1) If any vessel or aircraft departs from any place in Anguilla carrying on board without his consent any officer, the master of that vessel or the commander of that aircraft is guilty of an offence and is liable to a fine of \$20,000 or to imprisonment for a term of 2 years or to both, and may be arrested.

(2) Without prejudice to the liability of any person under subsection (1), the amount of any expenses incurred by the Comptroller or the Government of Anguilla by reason of the carrying away of any officer may be recovered from that person or from the owner of the vessel or aircraft or his agent.

Interfering with customs vessels

112. (1) If any person, save for just and sufficient cause, interferes in any way with any vessel, aircraft, vehicle, buoy, anchor, chain, rope, mark or anything that is being used by an officer in the performance of his duty, he is guilty of an offence and is liable to a fine of \$20,000 or to imprisonment for a term of 2 years or to both and may be arrested.

(2) If any person fires upon any vessel, aircraft or vehicle being used by an officer in the performance of his duty, he is guilty of an offence and is liable to imprisonment for a term of 10 years and may be arrested.

Signalling to smugglers

113. (1) In this section, reference to a “prohibited signal” or a “prohibited message” is a reference to a signal or message connected with the smuggling or intended smuggling of goods into or out of Anguilla.

(2) If any person by any means sends any prohibited signal or transmits any prohibited message from any place in Anguilla or from any vessel or aircraft for the information of any person in any vessel or aircraft, he is guilty of an offence and is liable to a fine of \$20,000 or to imprisonment for a term of 2 years or to both and may be arrested, and any equipment or apparatus used for the sending of the signal or message is liable to forfeiture.

(3) Subsection (2) applies whether or not the person for whom the signal or message is intended is in a position to receive it or is actually engaged at that time in smuggling.

(4) If, in any proceedings against a person under subsection (2), any question arises as to whether any signal or message was a prohibited signal or a prohibited message, the burden of proof shall lie on the defendant or claimant.

(5) If any officer or police officer has reasonable grounds to believe that a prohibited signal or a prohibited message is being or is about to be made or transmitted from any vessel, aircraft, vehicle, building or other place in Anguilla, he may board or enter that vessel, aircraft, vehicle, building or other place and take such steps as are reasonably necessary to stop or prevent the sending of that signal or message.

Offering goods for sale as smuggled goods

114. If any person offers for sale any goods as having been imported without payment of duty, or as having been otherwise unlawfully imported, then, whether or not those goods were in fact liable to duty or were so imported, the goods are liable to forfeiture and the person so offering them for sale is guilty of an offence and is liable to a fine of \$20,000 or 3 times the value of the goods, whichever is the greater, or to imprisonment for a term of 2 years or to both and may be arrested.

Special penalty where offender armed or disguised

115. Any person concerned in the movement, carrying or concealment of goods—

- (a) contrary to or for the purpose of contravening any prohibition or restriction for the time being in force under or by virtue of any enactment with respect to the importation, exportation or carriage coastwise of those goods; or
- (b) without payment having been made or security given for any duty payable on those goods;

and, while so concerned, is armed with any offensive weapon or disguised in any way, he is guilty of an offence and is liable to a fine of \$10,000 or to imprisonment to a term of 2 years or to both and may be arrested and the goods are liable to forfeiture.

Untrue declarations

116. (1) If any person—

- (a) makes or signs or causes to be made or signed, or delivers or causes to be delivered to Customs any document; or

(Act 15/2010, s. 21)

- (b) makes any statement in answer to any question put to him by an officer that he is required by or under any enactment to answer;

being a document or statement produced or made for the purpose of any assigned matter that is untrue in a material particular, he is guilty of an offence and is liable to a fine of \$10,000, and any goods in relation to which the document or statement was made are liable to forfeiture.

(2) If any person knowingly or recklessly—

- (a) makes or signs or causes to be made or signed, or delivers or causes to be delivered to Customs any document; or

(Act 15/2010, s. 21)

- (b) makes any statement in answer to any question put to him by an officer that he is required by or under any enactment to answer;

being a document or statement produced or made for any purpose of an assigned matter that is untrue in a material particular, he is guilty of an offence and is liable to a fine of \$20,000 or to imprisonment for a term of 2 years or to both and may be arrested, and any goods in relation to which the document or statement was made are liable to forfeiture.

(3) Where by reason of any such document or statement mentioned in subsection (1) or (2), the full amount of any duty payable is not paid or any overpayment is made in respect of any drawback, allowance, rebate or repayment of duty, the amount of duty unpaid or of the overpayment shall be payable immediately to the Comptroller and may be recovered accordingly.

Counterfeiting documents

117. If any person—

- (a) counterfeits or falsifies any document that is required by any enactment relating to an assigned matter or that is used in the transaction of any business relating to an assigned matter;
- (b) knowingly accepts, receives or uses any such document so counterfeited or falsified;
- (c) alters any document after it has been officially issued; or
- (d) counterfeits any seal, signature, initials or other mark of, or used by, any officer for the verification of such a document or for any other purpose relating to an assigned matter;

he is guilty of an offence and is liable to a fine of \$20,000 or to imprisonment for a term of 2 years or to both, and may be arrested.

False scales

118. (1) If any person required by any customs enactment to provide scales, provides, uses or permits to be used any scales which do not give a true reading, he is guilty of an offence and is liable to a fine of \$10,000.

(2) Where any article is or is to be weighed, counted, gauged or measured for the purpose of the taking of an account or the making of an examination by an officer, then if—

- (a) any such person as is mentioned in subsection (1); or
- (b) any person by whom or on whose behalf the article is or is to be weighed, counted, gauged or measured;

does anything whereby the officer is or might be prevented from, or hindered or deceived in taking a true account or making a due examination, he is guilty of an offence and is liable to a fine of \$10,000 and the scales and any articles in connection with which the offence was committed are liable to forfeiture.

(3) In this section, “scales” includes weights, measures and weighing or measuring machines or instruments, whether electronic or otherwise.

Fraudulent evasion

119. (1) Without prejudice to any customs enactment, if any person—

- (a) acquires possession of any of the following goods, having good reason to believe or knowing they are—
 - (i) goods that have been unlawfully removed from a warehouse or a customs warehouse,
 - (ii) goods which are chargeable with any duty which has not been paid, or
 - (iii) goods with respect to the importation, exportation or carriage coastwise of which any prohibition or restriction is for the time being in force under or by virtue of any enactment; or
- (b) is in any way knowingly concerned in carrying, removing, depositing, landing, harbouring, keeping or concealing or in any manner dealing with any such goods;

and does so with intent to defraud the Government of Anguilla of any duty payable or tax chargeable on the goods or to evade any such prohibition or restriction with respect to the goods, he is guilty of an offence and may be arrested and, subject to subsection (3), is liable to a fine of \$20,000 or 3 times the value of the goods, whichever is the greater, or to imprisonment for a term of 2 years or to both, and any goods in respect of which the offence was committed are liable to forfeiture.

(2) Without prejudice to any customs enactment, if any person is, in relation to any goods, in any way concerned in a fraudulent evasion or attempt at evasion of any—

- (a) duty chargeable on the goods; or
- (b) prohibition or restriction for the time being in force with respect to the importation, exportation or carriage coastwise of those goods under or by virtue of any enactment;

he is guilty of an offence and may be arrested and, subject to subsection (3), is liable to a fine of \$20,000 or to 3 times the value of the goods, whichever is the greater, or to imprisonment for a term of 2 years or to both, and any goods in respect of which the offence was committed are liable to forfeiture.

(3) Where the goods in respect of which any of the offences specified in subsections (1) and (2) were committed are controlled drugs, as defined in the Drugs (Prevention of Misuse) Act, a person guilty of an offence under this section is liable—

- (a) on summary conviction, to a fine of \$250,000 or to imprisonment for 5 years or to both; or
- (b) on indictment, to a fine of \$500,000 or to imprisonment for 20 years or to both.

Removing locks, seals, or marks

120. (1) Where, in pursuance of any power conferred by any customs enactment, any lock, seal or mark is used to secure or identify any goods, or place or container in which goods are kept, then if, without the authority of the proper officer—

- (a) that lock, seal or mark is unlawfully and prematurely removed or tampered with by any person; or
- (b) at any time before the lock, seal or mark is lawfully removed, any of the goods are wilfully removed by any person;

that person and the person then in charge of the goods, unless the latter proves that the act or omission constituting the offence took place without his knowledge or consent, are guilty of an offence and are liable to a fine of \$10,000 or 3 times the value of the goods removed, whichever is the greater, and the goods are liable to forfeiture.

(2) For the purposes of subsection (1), goods in a vessel or aircraft are deemed to be in the charge of the master of that vessel or the commander of that aircraft.

Computer fraud and related offences

121. If any person shall, knowingly or with intent to defraud the Government—

- (a) access a computer without authorization;
- (b) without authorization access any computer of Customs that is exclusively for the use of Customs, or in the case of a computer not exclusively for such use, is used by or for Customs;

- (c) access a computer without authorization and by means of such conduct—
 - (i) obtain any document, information or confidential instruction,
 - (ii) alter any document, information or confidential instruction,
 - (iii) introduce any information on the computer which is for the sole purpose of creating a computer virus or otherwise corrupt or disable the computer;
- (d) use authorised access to—
 - (i) obtain or alter information on the computer that the person is not entitled to obtain or alter, or
 - (ii) introduce any information on the computer for the sole purpose of creating a computer virus or otherwise corrupt or disable the computer,

that person commits an offence and is liable on summary conviction to a fine of \$50,000 or to imprisonment for a term of 6 years, or to both.

121-A- Falsification, etc. of record in the Customs Automated Control System.

A person who falsifies or, without the permission of the [Comptroller], deletes, damages, alters or impairs any record, data message or information stored in or processed by the Customs Automated Control System or on any duplicate electronic storage medium respecting the Customs Automated Control System commits an offence and is liable, on summary conviction, to a fine of [XX] dollars.

121-B- Unauthorized use of the Customs Automated Control System.

(1) A person shall not transmit to or receive information from the Customs Automated Control System or otherwise make use of the Customs Automated Control System unless the person is registered by the [Comptroller] as an authorised user of the Customs Automated Control System.

(2) Any person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine of [XX] dollars or to imprisonment for a term of [XX] years.

121-C- Unauthorized modification of the Customs Automated Control System.

(1) Subject to subsection (2), a person who unlawfully causes a modification of any program or data held in the Customs Automated Control System commits an offence and is liable, on summary conviction, to a fine of [XX] dollars or to imprisonment for a term of [XX] years.

(2) Where damage to the Customs Automated Control System is caused as a result of an offence committed under subsection (1), the person convicted of the offence is additionally liable of a fine of [XX] dollars or imprisonment for a term of [XX] years.

- (3) For the purpose of this section—
 - (a) it is immaterial that the modification in question is not directed at—
 - (i) any particular program or data;
 - (ii) a program or data of any kind; or

- (iii) a program or data held in the Customs Automated Control System;
- (b) it is immaterial whether an unauthorized modification is or is intended to be permanent or merely temporary;
- (c) a modification of any program or data held in the Customs Automated Control System takes place, if, by reason of the operation of any function of the Customs Automated Control System—
 - (i) any program or data held in the Customs Automated Control System is altered or erased;
 - (ii) any program or data is added to or removed from any program or data held in the Customs Automated Control System; or
 - (iii) any act occurs which impairs the normal operation of the Customs Automated Control System; and
- (d) any act that contributes towards the causing of a modification referred to in paragraph (c) shall be regarded as causing the modification.

121-D- Unauthorized obstruction of the Customs Automated Control System.

- (1) Subject to subsection (2), a person who knowingly and without authority—
 - (a) interferes with, interrupts, or obstructs the lawful use of the Customs Automated Control System; or
 - (b) impedes, prevents access to, or impairs the usefulness of any program or data on the Customs Automated Control System,

commits an offence and is liable, on summary conviction, to a fine of [XX] dollars or to imprisonment for a term of [XX] years.

(2) Without prejudice to the penalty imposed in respect of an offence committed under subsection (1), where damage is caused to the Customs Automated Control System as a result of an offence committed under subsection (1), the person convicted of the offence is liable to an additional penalty of a fine of [XX] dollars or imprisonment for a term of [XX] years.

121-E- Unauthorized interruption of the Customs Automated Control System.

A person who unlawfully engages in conduct which causes the Customs Automated Control System to cease to function, permanently or temporarily, commits an offence and is liable, on summary conviction, to a fine of [XX] dollars or to imprisonment for a term of [XX] years.

(Act 15/2010, s. 22)

PART 12

LEGAL PROCEEDINGS, FORFEITURE AND SALE OF GOODS

General Provisions as to Legal Proceedings

Institution of proceedings

122. (1) Subject to the provisions of subsection (3), no proceedings for an offence under any customs

enactment, or for condemnation under Schedule 3, shall be commenced except—

- (a) by order of the Comptroller in writing; and
- (b) in the name of an officer.

(2) In the case of the death, removal, discharge or absence of the officer in whose name any proceedings were commenced by virtue of paragraph (1)(b), those proceeding may be continued by any officer authorised in that behalf by the Comptroller.

(3) Notwithstanding anything in this section, where any person has been arrested for any offence for which he is liable to be arrested under any customs enactment, any court before which he is brought may proceed to deal with the case although the proceedings have not been instituted by order of the Comptroller or have not been commenced in the name of the officer.

Time limit on proceedings

123. Save as otherwise expressly provided for in this Act and notwithstanding any other provision of any other enactment, proceedings for an offence under the customs enactment may be commenced at any time within, but shall not be commenced later than, 5 years from the date of the commission of the offence.

Place of trial

124. Proceedings for an offence under any customs enactment may be commenced—

- (a) in any court having jurisdiction in the place—
 - (i) where the offence was committed,
 - (ii) where the person charged with the offence resides or is found, or
 - (iii) in the case of a body corporate charged with the offence, where that body corporate has its registered or principal office; or
- (b) if anything was detained or seized in connection with that offence, in any court having jurisdiction in the place where that thing was so detained or seized or was found or condemned as forfeited.

Persons who may conduct proceedings

125. Any proceedings before the Magistrate's Court in relation to an assigned matter may be conducted by an officer or any other person authorised in that behalf by the Comptroller.

Any customs officer or other person authorised by the Comptroller, although not an attorney-at-law, may prosecute and conduct any information or other proceedings under any customs enactment in respect of any offence or penalty.

Service of process

126. (1) Any summons or other process issued for the purpose of any customs enactment shall be deemed to have been duly served on a person—

- (a) if delivered to him personally;
- (b) if left at his last known place of abode or business or, in the case of a body corporate, at its registered or principal office; or
- (c) if left on board any vessel or aircraft of which he is the owner.

(2) Any summons, notice, order or other document issued for the purposes of any proceedings under any customs enactment, or of an appeal from a decision of any court in any such proceedings, may be served by an officer.

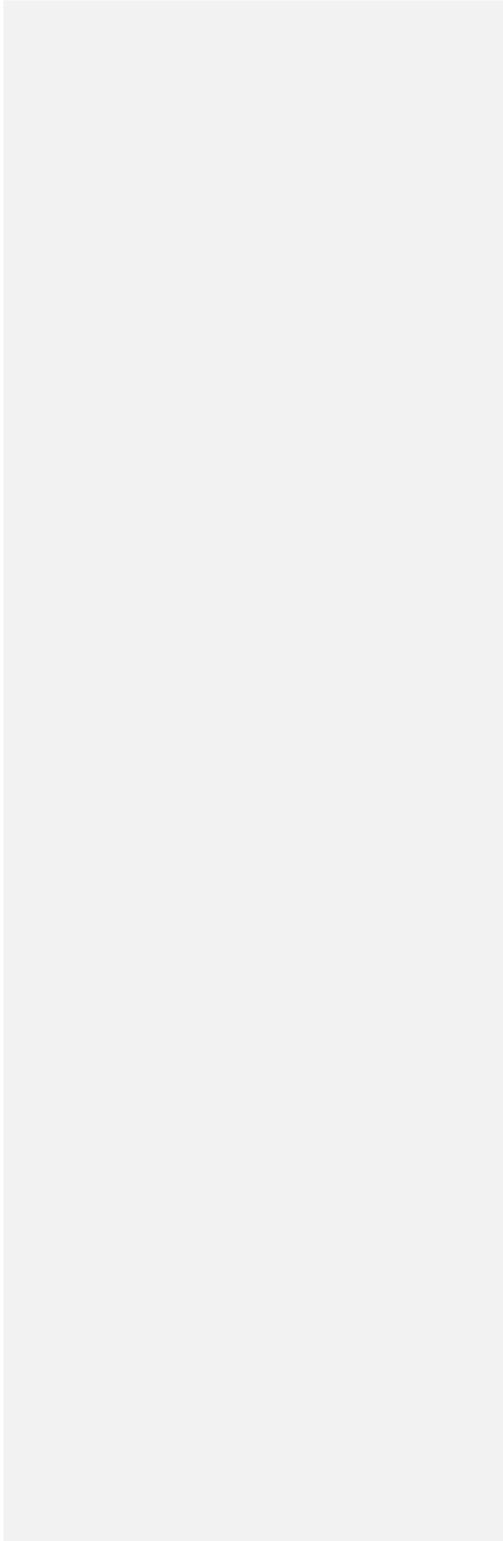
Incidental provisions

127. (1) Where liability for an offence under any customs enactment is incurred by 2 or more persons jointly, those persons shall each be liable for the full amount of any fine and may be proceeded against either jointly or severally, as the Comptroller thinks fit.

(2) Where any offence under any customs enactment that has been committed by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of that body corporate, or any person purporting to act in such capacity, he as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(3) Where a fine for an offence under any customs enactment is required to be fixed by reference

to the value of any goods, that value shall be taken as the price those goods might reasonably be expected to have fetched after payment of any duty chargeable on them, if they had



been sold in the open market at or about the date of the commission of the offence for which the penalty is imposed.

(4) Where, in any proceedings for an offence under a customs enactment, any question arises as to the duty or rate chargeable on any imported or exported goods, or goods which were intended to be exported, and it is not possible to ascertain the relevant time specified in section 2, the duty or rate shall be determined as if the goods had been imported, exported or brought to a place for exportation at the time when the proceedings were commenced.

(5) In any proceedings for an offence under a customs enactment, the fact that security has been given for payment of any duty or compliance with any condition in respect of the non-payment of which or non-compliance with which the proceedings are instituted is not a defence.

Power to compound offences

128. (1) *Where a matter is dealt with administratively* The Comptroller may, as he thinks fit—

- (a) compound any proceedings for any offence under any customs enactment;
- (b) stay the proceedings for condemnation of anything as being forfeited under this Act;
or
- (c) restore, subject to such conditions (if any) as he thinks proper, anything forfeited or seized under this Act.

(2) Where a person has admitted the commission of an offence under this Act and agrees to be dealt with under this Act, the Comptroller may, *subject to the approval of the Attorney General*, recover the customs duty payable by that person and penalty, if any, without instituting proceedings in a court.

(3) In any proceedings for any offence under any customs enactment, any court by which the matter is considered may mitigate any fine as it thinks fit.

Proof of certain documents

129. (1) Any document purporting to be signed by the Executive Council, the Governor, the Comptroller or by their order, or by any person with their authority, is, until the contrary is proved, deemed to have been so signed, and the matters contained in that document may, in any proceedings under any customs enactment, be proved by the production of that document or any document purporting to be a copy of that document.

(2) Where any book or other document or copy of it is required to be kept by virtue of any customs enactment, the production of that book or other document or a copy of it obtained by electronic means or otherwise and certified as a true copy by an officer shall in any proceedings under such an enactment be sufficient evidence of the matters contained therein unless the contrary be proved.

Proof of certain matters other than documents

130. (1) An averment in any process in proceedings under any customs enactment that—

- (a) those proceedings were instituted by order of the Comptroller;

- (b) any person is or was the Minister, the Comptroller, an officer or a police officer;
- (c) any person is or was appointed or authorised by the Comptroller to discharge, or was engaged by the order or with the concurrence of the Comptroller in the discharge of, any duty;
- (d) the Comptroller is or is not satisfied as to any matter as to which he is required by any customs enactment to be satisfied;
- (e) any place is within the limits of a port, approved wharf, customs airport or other customs area or within the territorial sea;
- (f) any goods thrown overboard, staved or destroyed were so dealt with in order to prevent or avoid their seizure; or
- (g) a vessel is an Anguillian vessel;

is, until the contrary is proved, sufficient evidence of the matter in question.

(2) Where in any proceedings relating to an assigned matter instituted by the Comptroller, an officer or a police officer or against the Comptroller any question arises as to the place from which goods have been brought or as to whether or not—

- (a) any duty has been paid or secured in respect of any goods;
- (b) any goods or other thing are of the description or nature alleged in the information, writ or other process;
- (c) any goods have been lawfully imported or lawfully unloaded from any vessel or aircraft;
- (d) any goods have been lawfully loaded into any vessel or aircraft or lawfully exported or were lawfully waterborne;
- (e) any goods were lawfully brought to any place for the purpose of being loaded into any vessel or aircraft, or exported; or
- (f) any goods are or were subject to any prohibition or restriction or carriage coastwise;

the burden of proof is upon the other party to the proceedings.

Detention of persons about to leave Anguilla

131. Where any person has by any action rendered himself liable to be prosecuted for any offence under any customs enactment and the Comptroller is of the opinion that that person is about to leave Anguilla, the Comptroller may apply to the Magistrate for a warrant for the arrest of that person.

Actions against officers

132. No action, suit or other proceedings shall be brought or instituted personally against any officer in respect of any act done by him in pursuance of any power granted to or duty imposed on him by a customs enactment.

*Forfeiture***Detention, seizure and condemnation of goods**

133. (1) Anything that is liable to forfeiture under any customs enactment may be seized or detained by any officer or police officer.

(2) Where anything that is liable to forfeiture is seized or detained by a police officer, that thing shall be delivered to the Comptroller within 7 days unless—

- (a) such delivery is not practicable; or
- (b) that thing is or may be required for use in connection with any proceedings to be brought otherwise than under any customs enactment.

(3) Where, by virtue of subsection (2), anything seized or detained by a police officer is not delivered up to the Comptroller within 7 days, notice in writing of the seizure or detention containing full details of the thing seized or detained shall be given to the Comptroller, and any officer shall be permitted to examine and take account of that thing at any time while it remains in the custody of the police.

(4) Schedule 3 shall have effect in relation to appeals against the seizure of anything seized as liable to forfeiture under any customs enactment, and for proceedings for the condemnation as forfeited of that thing.

(5) Notwithstanding that anything seized as liable to forfeiture has not been condemned as forfeited, or deemed to have been condemned as forfeited, the Comptroller may at any time if he sees fit—

- (a) deliver it up to any claimant upon his paying to the Comptroller such sum as the Comptroller thinks proper, being a sum not exceeding that which in his opinion represents the value of the thing, including any duty chargeable thereon that has not been paid; or
- (b) if the thing seized is a living creature or is in his opinion of a perishable nature, sell or destroy it.

(6) The restoration, sale or destruction under subsection (5) of anything seized as liable to forfeiture is without prejudice to any right of appeal against its seizure.

Forfeiture of vessels used in connection with goods liable to forfeiture

134. (1) Where anything has become liable to forfeiture under any customs enactment—

- (a) any vessel, aircraft, vehicle, animal, container (including any article of passengers' baggage) or any other thing whatsoever that has been used for the carriage, handling, deposit or concealment of the thing so liable to forfeiture, either at the time when it was so liable or for the purposes of the commission of the offence for which it later became so liable; and

- (b) any other thing mixed, packed or found with the thing so liable;

is also liable to forfeiture.

- (2) Where—

- (a) any vessel is or has been within the territorial sea;
- (b) any aircraft is or has been at any place whether on land or water in Anguilla; or
- (c) any vehicle is or has been within the limits of any port, approved wharf, customs airport or other customs area;

while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods, that vessel, aircraft or vehicle is liable to forfeiture.

(3) If, at any time while a vessel is within the territorial sea, any part of its cargo is thrown overboard or is staved or destroyed to prevent seizure, that vessel is liable to forfeiture.

(4) Where any cargo has been imported into Anguilla upon any vessel or aircraft and any part of that cargo is afterwards found to be missing then, if the master of the vessel or the commander of the aircraft is unable to account for that missing cargo to the satisfaction of the Comptroller, that vessel or aircraft is liable to forfeiture.

(5) Where any vessel, aircraft, vehicle or animal has become liable to forfeiture, all tackle, apparel or furniture belonging to it is also liable to forfeiture.

Special provisions as to forfeiture of larger vessels

135. (1) Notwithstanding any customs enactment, no vessel of 250 or more net tonnes is liable to forfeiture unless—

- (a) the offence in respect of or in connection with which the forfeiture is claimed—
- (i) was substantially the object of the voyage during which the offence was committed, or
- (ii) was committed while the vessel was under chase after refusing to stop when required to do so;
- (b) the vessel was constructed, adapted, altered or fitted in any manner solely for the purpose of concealing goods; or
- (c) subsection (3) applies.

(2) Where any vessel of 250 or more net tonnes would, but for subsection (1), be liable to forfeiture for or in connection with an offence under any customs enactment and, in the opinion of the Comptroller, a responsible officer of the vessel is implicated by his own act or by neglect in that offence, the Comptroller has the power to impose a fine on that vessel in any sum of \$20,000 and until that fine is paid, he may withhold clearance of that vessel.

(3) Where any vessel is liable to a fine under subsection (2), but the Comptroller is not satisfied that such a fine is adequate in relation to the offence committed, the Comptroller may take proceedings under Schedule 3 for the condemnation as forfeited of that vessel in any sum of \$20,000 as the court thinks fit.

(4) Where condemnation proceedings are taken under subsection (3), the Comptroller may require such sum as he thinks fit, not **exceeding \$20,000**, to be deposited with him and until that sum is so deposited, he may withhold clearance of that vessel.

(5) No claim shall lie against the Comptroller for damages in respect of the payment of any deposit or the detention of any vessel under this section.

(6) The exemption from forfeiture of any vessel under this section shall not affect the liability to forfeiture of any goods carried on board.

(7) For the purposes of this section—

- (a) “responsible officer”, in relation to any vessel, means the master, mate or engineer of the vessel and, in the case of a vessel carrying a passenger certificate, the purser or chief steward; and
- (b) without prejudice to any other grounds upon which a responsible officer of any vessel may be held to be implicated by neglect, he may be so liable if goods not owned by any member of the crew are discovered in any place under that officer’s supervision in which they could not reasonably have been put if he had exercised proper care at the time of the loading of the vessel or subsequently.

Protection of officers seizing or detaining goods

136. (1) Where, in any proceedings for the condemnation of anything seized as liable to forfeiture under any customs enactment, judgment is given for the claimant, the court may, if it thinks fit, certify that there were reasonable grounds for the seizure.

(2) Where any proceedings, whether civil or criminal, are brought against the Government of Anguilla or the Comptroller on account of the seizure or detention of anything as liable to forfeiture, and judgment is given for the plaintiff or prosecutor, then if either—

- (a) a certificate relating to the seizure has been granted under subsection (1); or
- (b) the court is satisfied that there were reasonable grounds for seizing or detaining that thing;

the plaintiff or prosecutor is not entitled to recover any damages or costs and the defendant is not liable to any punishment.

(3) Nothing in subsection (2) shall affect any right of any person for the return of the thing seized or detained or to compensation in respect of any damage to the thing or in respect of the destruction of it.

(4) Any certificate under subsection (1) may be proved by the production of either the original certificate or a certified copy of it purporting to be signed by an officer of the court by which it was granted.

Sale of Goods

Sale of goods condemned as forfeited

137. (1) Anything condemned as forfeited by virtue of Schedule 3, or deemed to have been condemned as forfeited by that Schedule, shall, unless a prohibited or restricted article, be sold by public auction.

(2) Any auction under this section shall be advertised in the *Gazette* not less than 7 days before it is due to take place.

(3) The Comptroller shall appoint a person, who may be an officer, to act as auctioneer at an auction under this section.

(4) No officer shall be permitted to bid for anything at an auction under this section and any officer who makes a bid in contravention of this subsection is guilty of an offence and is liable to a fine of \$10,000.

(5) The value for duty of anything sold at auction under this section is the price realised less the included duty.

(6) All money arising from the sale of anything at auction under this section shall be used to pay—

- (a) firstly, any duty payable on that thing; and
- (b) secondly, all the charges of and incidental to the seizure of that thing and any proceedings for the condemnation and the sale of it;

and any residue shall be paid by the Comptroller into the Consolidated Fund.

(7) Anything not sold at an auction under this section, and all prohibited or restricted goods condemned or deemed to be condemned as forfeited, shall be destroyed or otherwise disposed of as the Comptroller may direct.

(8) Nothing in this section shall prevent the Comptroller from authorising the withholding from sale of anything condemned or deemed to be condemned as forfeited, or its use by an officer where such retention and use would assist that officer in the performance of his duty.

PART 13
DETERMINATION OF DISPUTES

Appeal to the Comptroller

138. (1) Where any amount of duty demanded by an officer is disputed by the person required to pay that amount, that person shall pay that amount but then may, at any time before the expiration of 30 days from the date of payment, require the Comptroller by a notice in writing under this subsection to reconsider the duty demanded.

(2) A notice under subsection (1) shall state the grounds for disputing the amount of duty demanded.

(3) The Comptroller, after reconsidering the amount of duty demanded and taking into account the grounds contained in the notice, may increase, decrease or confirm that amount, and shall notify the person who paid the amount demanded of his decision (hereinafter in this Part referred to as the “appellant”).

Customs Appeal Commissioners

139. (1) The Governor in Council shall from time to time appoint by notice in the *Gazette* such persons as he sees fit to be Customs Appeal Commissioners (hereafter in this Part referred to as “Commissioners”).

(2) The Governor in Council shall appoint one of the Commissioners to be Chairman and another to be Deputy Chairman, and any hearing of the Commissioners shall be before either the Chairman or Deputy Chairman and two other Commissioners.

(3) The Governor in Council shall appoint a Secretary to the Commissioners and any notice or correspondence, other than decisions of the Commissioners, may be issued and signed by or on behalf of the Secretary.

(These provisions can be moved to regulations).

(4) Every decision of the Commissioners shall be given under the signature of the Chairman presiding at that hearing.

(5) At any hearing of the Commissioners the decision of the majority shall prevail.

(6) At any hearing the Commissioners shall have—

- (a) power to summon to attend that hearing any person who in their opinion is or might be able to give evidence relevant to the matter before the hearing;
- (b) power to examine that person on oath or otherwise;
- (c) power to require any person to produce any books or other documents that are in his custody or under his control and which they consider may contain evidence relevant to the matter before the hearing;
- (d) all powers of a subordinate court with respect to the enforcement of attendance of witnesses, the hearing of evidence on oath and punishment for contempt;

- (e) power to admit or reject any evidence adduced;
- (f) power to postpone or adjourn that hearing; and
- (g) power to determine the procedure to be followed at any hearing.

Establishment of Customs Appeal Commission.

139-A. (1) There is hereby established a body to be known as the Customs Appeal Commission comprising [3] members appointed by the Minister in accordance with subsection (2).

- (2) The Minister shall, by notice in the Gazette appoint persons who—
 - (a) have experience in customs matters; or
 - (b) in the opinion of the Minister, by reason of their profession and training are qualified to be commissioners.
- (3) The Commission shall hear appeals from a person who:
 - (a) is dissatisfied with a decision of the [Comptroller] under Section 138; or
 - (b) is otherwise conferred with a right of appeal to the Commission under this Act or the Regulations
- (4) The rules and procedures under which the commission will hear appeals are set out in the regulations.

Appeal to the Customs Appeal Commissioners

140. (1) Any person notified of a decision under section 138 may, subject to the requirements of section 138(1), appeal against the decision of the Comptroller by serving notice of appeal on the Secretary and the Comptroller within 30 days of the notification or such longer period as the Commissioners may permit.

- (2) A notice of appeal under subsection (1) shall be in writing and shall state—
 - (a) the date of the decision of the Comptroller that is appealed against;
 - (b) the name and address of the person to whom the decision appealed against was sent;
 - (c) the amount of duty in dispute; and
 - (d) the grounds for claiming that the amount of duty in dispute is not due and payable.
- (3) Thirty days or such shorter time as the parties may agree before the date fixed for the hearing of the appeal, the Secretary shall by notice in writing advise the Comptroller and the appellant of the time and date on which, and the place where, the appeal is set down for hearing.
- (4) The hearing of any appeal under subsection (1) shall be in public unless the Chairman of that hearing shall otherwise direct.
- (5) At any hearing under subsection (1)—
 - (a) the Comptroller and the appellant shall be entitled to appear in person or by representation;
 - (b) the burden of proof on any matter shall lie with the appellant; and

(c) the appellant shall be responsible for the costs of the appeal unless the Commissioners otherwise direct.

(6) The Commissioners may increase, decrease or confirm the amount of duty due and shall notify the Comptroller and the appellant of their decision.

(7) Any decision of the Commissioners under this section shall be published.

140-A- Commencement of proceedings.

Proceedings before the Commission shall be commenced by the lodging with the Commission of an application in the form set out in the Eleventh Schedule, together with the prescribed fee, if any.

140-B- Nature of appeal.

Appeals shall be by way of a hearing de novo.

140-C- Commission may extend time for appeal.

Where under this Act a person is entitled to appeal to the Commission within a specified time, the Commission may, on an application made within the specified time, extend the time within which the appeal may be brought.

140-D- Hearing.

(1) Subject to section 256, if the Commission considers that an appeal is ready to be heard, the Commission shall—

- (a) fix a date, time, and place for the hearing of the appeal; and
- (b) notify the appellant and the [Comptroller] of the date, time, and place fixed.

(2) A notice to the appellant under subsection (1) —

- (a) shall, in addition to the matters referred to in subsection (1), inform the appellant of the provisions of subsections (5) and (6); and
- (b) shall be served on the appellant by personal service or by post in accordance with this Act.

(3) At the hearing of an appeal before the Commission the appellant and the [Comptroller] may provide evidence and shall be given an opportunity to be heard either in person or by a person authorised by the appellant or the [Comptroller] to appear on his behalf, without regard to whether that person is an attorney at law.

(4) Where the appellant or the [Comptroller] fails to appear before the Commission at the time and place appointed, the Commission may nevertheless, upon proof of service of the notice of the hearing, proceed to determine the appeal.

(5) Subject to subsection (6), the hearing of an appeal before the Commission shall be in public.

(6) Where the Commission is of the opinion that it is proper to do so, having regard to the interests of any party and to the public interest, it may hold a hearing or any part of a hearing in private.

(7) The Commission may order that any part of any evidence given or the name of any witness not be published, and any such order may be subject to such conditions as the Commission thinks fit.

140-E- Commission may decide appeal without oral hearing if both parties consent.

(1) Notwithstanding section 255, the Commission may, if it thinks fit and if both parties consent, decide an appeal without holding an oral hearing.

(2) Where the Commission, at any time during its consideration of an appeal in accordance with subsection (1), decides that an oral hearing should be held, the Commission shall fix a date, time, and place for the hearing of the appeal in accordance with section 255.

140-F- Commission's powers.

For the purpose of a hearing and deciding any appeal before it, the Commission shall have —

- (a) the powers, duties, functions, and discretions of the [Comptroller] in making its decision; and
- (b) the powers of the High Court, in the exercise of its civil jurisdiction, in respect of citing parties and conducting and maintaining order at the hearings of the Commission.

140-G- Evidence.

(1) The Commission may receive as evidence any statement, document, information, or matter that, in the opinion of the Commission, may assist the Commission to deal effectually with the proceedings.

(2) The Commission may take evidence on oath.

(3) The Commission may permit a person appearing as a witness before it to give evidence by tendering a written statement and verifying it by oath.

140-H- Powers of investigation.

(1) For the purposes of dealing with the matters before it, the Commission or any person authorised by the Commission in writing to do so may —

- (a) inspect and examine any papers, documents, records, or articles;
- (b) require any person to produce for examination any papers, documents, records, or articles in that person's possession or under that person's control, and to allow copies of or extracts from any such papers, documents, or records to be made; and
- (c) require any person to furnish, in a form approved by or acceptable to the Commission, any information or particulars that may be required by it.

(2) The Commission may, if it thinks fit, require that any written information or particulars or any copies or extracts furnished under this section be verified by statutory declaration or otherwise.

(3) For the purposes of dealing with the matters before it, the Commission may of its own motion, or on application, order that any information or particulars, or a copy of the whole or any part of any paper, document, or record, furnished or produced to it be supplied to any person appearing before the Commission, and in the order impose such terms and conditions as it thinks fit in respect of the production of and use that is to be made of the information.

(4) Every person shall have the same privileges in relation to the giving of information to the Commission, the answering of questions put by the Commission, and the production of papers, documents, records, and articles to the Commission as witnesses have in a court of law.

140-I- Power to summon witnesses.

For the purposes of dealing with the matters before it, the Commission may of its own motion, or on application, issue in writing a summons requiring any person to attend at the time and place specified in the summons and to give evidence, and to produce any papers, documents, records, or articles in that person's possession or under that person's control that are relevant to the matters before the Commission.

140-J- Service of summons by the Commission.

- (1) A summons by the Commission to a witness shall be served by —
 - (a) delivering it to the person summoned at least [24 hours] before the attendance of the witness is required; or
 - (b) sending it registered post addressed to the person summoned at that person's usual place of residence or business at least [10 days] before the date on which the attendance of the witness is required.

(2) Where the summons is delivered by registered post, it shall be deemed for the purposes of subsection (1)(b) to have been served at the time when a letter would be delivered in the ordinary course of post.

140-K- Protection of persons appearing.

Every witness giving evidence, and every counsel or agent or other person appearing before the Commission, shall have the same privileges and immunities as witnesses and counsel in a court of law.

140-L- Grounds of appeal and burden of proof.

(1) Subject to subsection (2), in an appeal, the appellant is limited to the grounds stated in the appellant's application, and the burden of proof is on the appellant.

(2) The Commission may, either on the application of the appellant or of its own motion, amend the grounds stated in the application.

140-M- Sittings of Commission.

- (1) Sittings of the Commission shall be held at such times and places as the Commission determines.
- (2) The Commission may adjourn a sitting or modify the place of a sitting either before the time of the sitting or at the sitting.

140-N- Commission may dismiss frivolous or vexatious appeal.

The Commission may at any time dismiss an appeal if it is satisfied that the appeal is frivolous or vexatious.

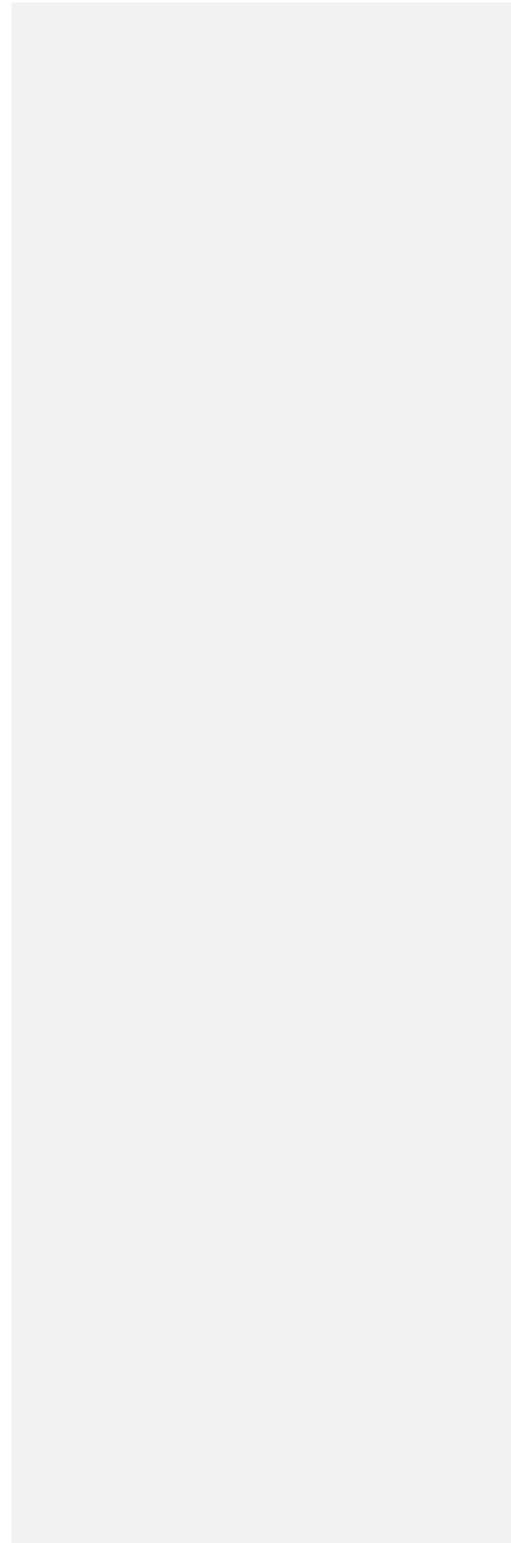
140-O- Decision of Commission.

- (1) Every decision of the Commission shall be given in writing, with a statement of the reasons for the decision.
- (2) A copy of the decision shall be given to the parties to the appeal.

Right of further appeal

141. (1) The Comptroller or the appellant may appeal to the High Court against any decision of the

Commissioners which involves a question of law, including a question of mixed fact and law.



(2) The Comptroller or the appellant may appeal to the Court of Appeal against any decision of the High Court, being a decision on an appeal from the Commissioners, which involves a question of mixed fact and law.

(3) On an appeal to the Court of Appeal or High Court under this section, that Court shall have power to—

- (a) increase, decrease or confirm the amount of duty due;
- (b) make any such other order as it thinks fit; and
- (c) make such order as to costs as it thinks fit.

Payment of duty after appeal

142. (1) Subject to subsection (2), where a decision of the Commissioners, the High Court or the Court of Appeal on an appeal under this part is that the amount of duty due—

- (a) should be increased, the appellant shall pay to the Comptroller the amount of the increase; and
- (b) should be decreased, the Comptroller shall authorise payment to the appellant the amount of the decrease;

within 30 days of the decision.

(2) Where the decision referred to in subsection (1) is that of the Commissioners or the High Court, no amount shall be payable if, within the 30 day time limit, an appeal against that decision is lodged with the High Court or the Court of Appeal, as the case may be.

RECORDKEEPING

Keeping of records.

142-A. (1) Every importer, exporter, agent, carrier, warehouse occupier, operator of a customs controlled area, manager of a customs place and any person concerned with the coasting trade and any other person who conducts business under any customs enactment shall keep or cause to be kept in the English language in Anguilla, whether in electronic form or otherwise, all records relating to the transaction of such business in accordance with subsection (2) for a period of [5 years] from the date of such transaction.

(2) Every person conducting business under this Act shall keep and maintain the following records and other information relating to the conduct of his business—

- (a) an account of the imported goods entering the business detailing the—
 - (i) name of the conveyance;
 - (ii) date of arrival of the conveyance;
 - (iii) invoices detailing the quantity, description and value of the imported goods; and
 - (iv) shipping documents including the packing list, bill of lading and air waybill respecting the goods;
- (b) an account of the goods transferred or removed from the business, whether for export or home use;

- (c) the balance of goods to be found in the business at any point in time;
- (d) purchase and sales ledgers of the business;
- (e) copies of invoices issued by the business for sale to customers; and
- (f) any other document or record relating to the conduct of business under this Act or any other customs enactment.

(3) A person who fails to comply with subsection (1) commits an offence and is liable to a fine of [xxx].

(4) For the purposes of this section, records in relation to the transaction or the conduct of a business includes any correspondence, computer printouts, audited reports, income and expenditure accounts, bank statements, contracts or any other accounts or records which are in any way related to the importation or exportation of goods.

142-B. Access to records.

(1) A person to whom section 118(1) applies shall, when required by a proper officer—

- (a) make available and give access to the records that the person is required to keep under that section;
- (b) ensure that the proper officer has access to the records, at all reasonable times;
- (c) answer any question relevant to matters arising under this Act put to the person by the proper officer in respect of those documents, books, records, or other information;
- (d) provide working space and personnel to assist the officer in the performance of his duties; and
- (e) provide copies of the records to the proper officer.

(2) Where information is recorded or stored by means of an electronic or other device, the person referred to in subsection (1), or the agent of that person, shall, at the request of a proper officer, operate the device, or cause it to be operated, in order to make the information available to the proper officer.

(3) A person, who fails without reasonable cause to comply with subsection (1) or (2), commits an offence and is liable to a fine of [xxx].

142-C. Retention of records by [Comptroller].

(1) The [Comptroller] may subject to this Act, take possession of any record required to be produced under this Act.

(2) Where the [Comptroller] takes possession of any record under subsection (1), the [Comptroller] shall, at the request of the person otherwise entitled to the record provide that person with a copy of the record certified under the seal of the Customs as a true copy.

(3) Every copy so certified is admissible as evidence in all courts or tribunals as if it were the original.

(4) Notwithstanding subsection (2), where the [Comptroller] requires original invoices or certificates of origin, or both to be produced for goods imported or exported, he may—

- (a) require such invoices or certificates of origin, or both, to be submitted in duplicate and may retain the duplicates; or
- (b) retain the originals, if such invoices or certificates of origin, or both, are not submitted in duplicate.

Application of sections to electronic documents.

142-D. (1) For greater certainty, the references in subsection [xx](1) to invoices and to books of account include a reference to those types of documents that are in electronic form.

(2) An importer, exporter or any person concerned in the importation or exportation of any goods shall provide an officer with access to documents in electronic form of the types referred to in subsection (1), and permit the officer to make copies of such documents, for the purposes of the officer carrying out any powers, duties or functions under subsection [xx](1).

PART 14
MISCELLANEOUS

Record retention

~~143.—(1) Importers and exporters shall keep any invoice, bill of lading, electronic or mechanical record or other book or document relating to importation, exportation or carriage coastwise of goods for a period of 5 years from the date of importation, exportation or carriage coastwise of those goods.~~

~~(2) Any person who, without reasonable cause, fails to comply with a requirement imposed on him under subsection (1) is guilty of an offence and is liable to a fine of \$10,000.~~

~~(Act 15/2010, s. 23)~~

Governor in Council may make regulations

~~144.—The Governor in Council may make regulations for the better carrying out of this Act and without prejudice to the generality of the foregoing, may make regulations—~~

~~(a) increasing the amount of any fine that may be imposed under this Act or by any regulation made thereunder;~~

~~(b) prescribing scales of fees or charges to be levied in respect of any services or supplies provided by customs; and~~

~~(c) any matter or thing required under this Act to be prescribed.~~

Repeal and saving

145. (1) The Customs Duties Ordinance, 1977 and Customs Ordinance, 1981 are repealed.

(2) Notwithstanding the repeal of the Ordinances referred to in subsection (1)—

- (a) every order, decision or request made by the Comptroller under those Ordinances shall be deemed to be an order, decision or request made by the Comptroller under the corresponding provisions of this Act and shall have effect accordingly;
- (b) all regulations made under the Ordinances referred to in subsection (1) that are in force on 1st November 2001, other than Integrated Customs Tariff Regulations, 1991, in so far as such regulations are not inconsistent with this Act are deemed to be regulations made under this Act and may be amended or rescinded by regulations made under this Act;
- (c) every requirement made, certificate issued, payment made, notice, determination, direction or approval given, application made or thing done under those Ordinances shall, if in force on the day immediately preceding 1st November 2001, continue in force and shall, so far as it could have been made, issued, given or done under this Act have effect as if made, issued, given or done under the corresponding provisions of this Act; and
- (d) every officer appointed under those Ordinances and holding office on the day preceding 1st November 2001 shall continue to hold such office as though this Act had been in operation at the time of the appointment of such officer.

Consequential amendments to ICT Regulations

146. (1) The Integrated Customs Tariff Regulations, 1991 are amended in the manner and to the extent set out in Schedule 4.

(2) The Integrated Customs Tariff Regulations, 1991 as amended by Schedule 4 are deemed to be made under section 76(1)(b) and approved under section 76(2)(b).

Removal of difficulties

~~147. (1) The Governor in Council, by regulation, may make such provision as he may consider necessary or expedient for the purpose of providing for any unforeseen or special circumstance or of resolving, determining or adjusting any doubt, question or matter that may arise in relation to the application of this Act or in respect of which no provision or no effective provision is made in this Act.~~

~~(2) Every regulation made under this section shall, upon publication thereof in the *Gazette*, have the force of law and be valid and effectual as if it were herein enacted.~~

Citation

148. ~~This Act may be cited as the Customs Act, Revised Statutes of Anguilla, Chapter C169.~~

Transitional regulations

149. The Governor in Council may, in the one year period after 30 September 2010, make such transitional regulations in respect of the coming into force of the Customs Amendment Act, 2010 as he considers appropriate, and may make them retroactive to that date.

SCHEDULE 1

(Sections 52(1) and (2))

GOODS NOT PERMITTED TO BE WAREHOUSED ON IMPORTATION

Arms, ammunition and explosives

Asphalt, all kinds including pitch and tar

Dangerous chemicals

Fireworks

Hydrocarbon oil and fuel (other than at installations approved for the purpose)

Manure

Matches

Metals including radioactive materials

Any other goods that in the opinion of the Comptroller are likely to cause damage to other goods stored in the same warehouse or that may be considered hazardous to warehouse users.

SCHEDULE 2
(Section 88)
PROHIBITIONS AND RESTRICTIONS

PART 1
PROHIBITED IMPORTS

1. Goods, the importation of which is prohibited by or under any enactment or by an Order made by the Governor in Council to give effect to any United Nations sanctions.
2. Wartyos
3. Imitation firearms
4. Food unfit for human consumption

PART 2
RESTRICTED IMPORTS

1. Gold bullion and all other gold except with the permission of Ministry of Finance
2. Fireworks and explosives
3. Counterfeit notes or coins
4. Indecent or obscene material
5. Goods the importation of which is restricted by any other enactment, except in accordance with the restrictions in the enactment

PART 3
PROHIBITED EXPORTS

Goods, the exportation of which is prohibited by any other enactment

PART 4
RESTRICTED EXPORTS

Goods the exportation of which is restricted by any other enactment, except in accordance with the restrictions in the enactment

SCHEDULE 3

(Section 133(4))

FORFEITURE**Notice of seizure**

1. (1) The Comptroller shall, except as provided by subsection (2), give notice of the seizure of anything seized as liable to forfeiture and of the grounds of that seizure to any person who to his knowledge was the owner of, or one of the owners of that thing at the time of its seizure.

(2) Notice shall not be required to be given under subsection (1) if the seizure was made in the presence of—

- (a) the person whose offence or suspected offence occasioned the seizure;
- (b) the owner or any of the owners of the thing seized or any employee or agent of his; or
- (c) in the case of anything seized in a vessel or aircraft, the master or commander of that vessel or aircraft.

Service of notice

2. Notice under section 1 shall be given in writing and shall be deemed to have been duly served on the person concerned—

- (a) if delivered to him personally;
- (b) if addressed to him and left or forwarded by post to him at his usual or last known place of abode or business or, in the case of a body corporate, at its registered or principal office; or
- (c) where he has no address in Anguilla or his address is unknown, by publication of the notice of seizure in the *Gazette*.

Notice of claim that thing not liable to forfeiture

3. Where any person, who was at the time of the seizure of anything the owner or one of the owners of it, claims that it was not liable to forfeiture, he shall, within 1 month of the date of service of the notice of seizure or, where no such notice was served, within 1 month of the date of seizure give notice of his claim in writing to the Comptroller at any customs office.

Name and address to be included in notice of claim

4. Any notice of claim under section 3 shall specify the name and address of the claimant and, in the case of a claimant who is outside Anguilla, shall specify the name and address of a solicitor in Anguilla who is authorised to accept service and act on behalf of the claimant, and service upon a solicitor so specified is deemed to be proper service upon the claimant.

Notice defective

5. If, on the expiration of the relevant period under section 3 for the giving of a notice of claim, no such notice has been given to the Comptroller, or where such notice is given, that notice does not comply with any requirement of section 4, the thing seized is deemed to have been duly condemned as forfeited.

Condemnation by court

6. Where notice of claim in respect of anything seized is duly given in accordance with sections 3 and 4, the Comptroller shall take proceedings for the condemnation of that thing by the court, and if the court finds that the thing was at the time of its seizure liable to forfeiture, that court shall condemn that thing as forfeited.

Effective date of forfeiture

7. Where anything is in accordance with either section 5 or 6 deemed to have been condemned, or condemned as forfeited, then without prejudice to any restoration or sale, the forfeiture is deemed to have had effect from the date when the liability to forfeiture arose.

Court proceedings for condemnation

8. Proceedings for the condemnation of anything shall be civil proceedings and may be instituted—

- (a) in the Magistrate's Court; or
- (b) in the High Court.

Requirements of court proceedings

9. (1) In any proceedings for condemnation, the claimant or his solicitor shall make oath that the thing was, or was to the best of his knowledge and belief, the property of the claimant at the time of the seizure.

(2) In any proceedings for condemnation before the High Court, the claimant shall give such security for the costs of the proceedings as may be determined by the Court.

(3) If this section is not complied with, the court shall give judgment for the Comptroller.

Appeals

10. (1) Any party to condemnation proceedings in the Magistrate's Court may appeal to the High Court against the decision of that Magistrate's Court in those proceedings.

(2) Where any appeal is made against the decision of any court in condemnation proceedings, the thing seized shall remain in the possession of, or be returned to the possession of, the Comptroller until the final determination of the matter.

Proof of seizure

11. In any proceedings arising out of the seizure of anything, the fact, form and manner of the seizure shall be taken to have been as set forth in the process unless the contrary is proved.

Oath under section 9(1)

12. Where anything is at the time of its seizure the property of a body corporate, or of 2 or more partners or of any number of persons exceeding 5 not being in partnership, the oath required to be taken by section 9, and any other thing required by this Schedule or the rules of court to be done by or by any person authorised by the claimant or owner may be taken or done by the following persons respectively, that is to say—

- (a) where the owner is a body corporate, the secretary or some other authorised officer of that body;
- (b) where the owners are in partnership, any of those owners; or
- (c) where the owners are any number of persons exceeding 5 not being in partnership, any 2 of those persons on behalf of themselves and their co-owners.

Where thing not liable to forfeiture

13. (1) Where, under section 133 of the Act, anything is restored, sold or destroyed and it is held in proceedings taken under this Schedule that the thing was not liable to forfeiture at the time of its seizure, the Comptroller shall on demand by the claimant tender to him—

- (a) where the thing was restored, an amount equal to any amount paid as a condition of that restoration;
- (b) where the thing was sold, an amount equal to the proceeds of sale; or
- (c) where the thing was destroyed, an amount equal to its market value at the time of its seizure.

(2) Where an amount tendered under subsection (1) includes a sum on account of the duty chargeable on the thing that has not been paid, the Comptroller may deduct so much of that amount as represents the duty.

(3) If the claimant accepts an amount tendered to him under subsection (1), he is not entitled to maintain any further action on account of the seizure, detention, restoration, sale or destruction of the thing seized.

(4) Where the claimant and the Comptroller are unable to agree upon the market value of anything destroyed under section 133 of the Act, that value shall be determined by the Governor.

SCHEDULE 4

(Section 146)

AMENDMENTS TO THE INTEGRATED CUSTOMS TARIFF REGULATIONS, 1991

1. The Integrated Customs Tariff Regulations, 1991 (hereinafter referred to as the “Principal Regulations”) are amended by adding the following after section 2—

“Exemptions from customs duty

2A. The items set out in the First Schedule under the centred heading “Exemptions” are exempt from customs duty to the extent specified therein.”

2. The First Schedule to the Principal Regulations is amended—

(a) by adding the following sections after section 17 under the centred heading “Exemptions”—

“Goods in general

18. (1) Goods imported by the holder of a duty free franchise in respect of such goods.

(2) Goods and parts thereof replaced free of charge under any warranty by the supplier provided that such replacement shall be made within 6 months of the date of import or date of issue of the warranty whichever is the earlier.

(3) Goods imported for repair, restoration or processing in Anguilla and re-export after such repair, restoration or processing.

Goods retained in Anguilla for limited time

19. (1) The following classes of goods imported for retention in Anguilla for a period not exceeding 6 months or for such extended period as the Comptroller may authorize in any particular case—

(a) commercial travellers samples;

(b) containers and pallets;

(c) packages and packing materials;

(d) goods for display or exhibition;

(e) goods covered by A.T.A. Carnet;

(f) any other goods for use in construction or manufacture which are proved to the satisfaction of the Comptroller not to be available for hire or purchase in Anguilla.

(2) Vessels imported for retention in Anguilla for a total period of 90 days in any one calendar year commencing on the date of first importation, but any goods so imported which are not re-exported within the period or extended period permitted shall become liable to the full duty payable in respect of such goods as if the same had been imported without reference to this subsection.”

(b) by repealing all the items under the centred heading “Valuation: Calculation of Duty”.